

Responsiveness Summary - Bacteria TMDL for Ballona Creek, Ballona Estuary, and Sepulveda Channel
Comment Due Date: May 19, 2006

1. California State Lands Commission - (CSLC)
2. City of Los Angeles Bureau of Sanitation – (City of Los Angeles BOS)
3. Los Angeles County Department of Public Works (Public Works))
4. Los Angeles County Sanitation Districts (Sanitation Districts)
5. California Department of Transportation (Caltrans)
6. California Department of Fish and Game (Fish and Game)
7. Heal the Bay
8. Richards Watson & Gershon (representing City of Beverly Hills)
9. Playa Vista
10. Latham & Watkins (representing Playa Vista)
11. Geosynthec Consultants (representing Playa Vista)

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1.1	California State Lands Commission (CSLC)	5/18/06	<p>The CSLC should not be a responsible jurisdiction for complying with the Proposed Amendment</p> <p>The CSLC holds fee title to two distinct parcels: the Freshwater Marsh and the Expanded Wetlands Parcel. Title to these parcels was only recently transferred from Playa Capital Company LLC (Playa) to the CSLC in February 2004.</p> <p>Freshwater Marsh: When Playa transferred fee title to the CSLC it reserved unto itself perpetual easements to plan, construct, maintain, and remediate the Freshwater Marsh to fulfill its permit and regulatory requirements. As stated in Article I, Section C of the deed, these easements are “for the purposes of complying with any of the following permits or regulatory requirement, currently existing or <i>subsequently granted or imposed upon</i> Grantor (Playa) or <i>any other person or entity</i> in connection with the construction and/or implementation of the Wetlands Restoration Plan...” with the permits as listed above, specifically including the California Regional Water Board (Board), and pursuant to “other conditions” imposed by the Board and other regulatory agencies [emphasis added]. Thus the deed clearly contemplated that Playa would be responsible for complying with any future conditions imposed by the Board on any of the other regulatory agencies even when imposed on third parties like the CSLC .</p>	<p>Regional Board staff recognizes that of the two parcels mentioned only the Freshwater Marsh discharges to the creek via the storm drain system. As this discharge is covered under the MS4 permit, the State Lands Commission will be removed as a responsible agency for complying with the TMDL.</p>

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			<p>Before Playa transferred fee title of the Freshwater Marsh Parcel to CSLC, it transferred a conservation easement for management of the marsh to the Ballona Wetlands Conservancy. The Conservancy consists of four members: Playa, the City of Los Angeles, the California Resources Agency, and the Friends of Ballona Wetlands. The Conservancy contracts with the Center for Natural Lands Management for operation, maintenance, and monitoring of the marsh.</p>	
1.2	CSLC	5/18/06	<p>Expanded Wetlands Parcel: The Expanded Wetlands Parcel was transferred to CSLC by Playa under a separate deed. To the best of our knowledge, it does not drain into the Freshwater Marsh nor does it have any direct hydrological connection to Ballona Creek</p>	<p>The Expanded Wetlands parcel will not be included as a source in the TMDL if there is no hydrologic connection to Ballona Creek</p>
2.1	City of Los Angeles BOS	5/18/06	<p>The Bureau of Sanitation believes that the compliance schedule for Reaches 1 and 2 and Sepulveda Channel of the Creek cannot be equated to level of effort and time to comply for Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL). The SMBBB TMDL has an effective date of July 15, 2003. Linking the two schedules reduces the Ballona Creek TMDL implementation activities by four years. What must be considered is that when the SMBBB TMDL was approved, some of the BMPs and their engineering plans to comply with the dry-weather portion of the SMBBB TMDL were already in place. The BMPs and engineering plans for Ballona Creek are not in place at this time.</p>	<p>The Ballona Creek bacteria TMDL allows more time for summer dry weather compliance, and the same time for winter dry weather compliance, as the SMBB TMDL. The SMBB TMDL requires full compliance at the outlet of Ballona Creek no later than 18 years after its effective date. Therefore to achieve these Waste Load Allocations, the implementation schedule for Ballona must be no longer than 18 years after the final compliance date of the SMBB TMDL. While this translates into 14 years after the effective date of the Ballona Bacteria TMDL, responsible agencies have been aware of this schedule since the adoption of the SMBB TMDL on December 12, 2002.</p>

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			Therefore, the shorter schedule for this TMDL will limit the implementation options to comply with the bacteria TMDL requirements, especially if a phased, iterative process is desired to implement distributed BMPs.	
2.2	City of Los Angeles BOS	5/18/06	Ballona Creek is a fundamentally different type of watershed than the Santa Monica Bay Beaches, especially in Reaches 1 and 2 where there is a channelized open water conveyance system. Consequently, it will require extensive coordination of monitoring and implementation by affected agencies including investigating and identifying sources, determining the water and flow hydrology during dry- and wet-weather, siting, planning, engineering, and designing of facilities, analysis of implementation alternatives, obtaining needed funds to construct such facilities, and initiating selected capital improvement projects by developing a memorandum of Agreement (MOA) for cost sharing among many entities. To maximize benefits among several TMDLs, it seems particularly burdensome to have inflexibility built into this TMDL at the onset.	There is flexibility in the means by which the responsible agencies choose to attain compliance with the TMDL. With regard to the schedule see response to 2.1
2.3	City of Los Angeles BOS	5/18/06	<i>Requested action:</i> The Bureau requests the Regional Board to support distributed BMPs by instituting a feasible schedule of a minimum of 18 years for Reaches 1 and 2 and the Sepulveda Channel, which are channelized open water conveyance systems, and reassess the schedule for the reaches and the estuary at the TMDL 4-year re-evaluation.	The Regional Boards fully supports distributed BMPs as a means of achieving compliance. However, the schedule is both necessary (see response to 2.1) and reasonable. The Regional Board expects that responsible agencies will be able to apply results and information obtained from on-going studies and iterative BMP applications from other Bacteria TMDL implementation efforts.

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			Distributed BMPs will require initiation of source studies and land uses, and determining and instituting integrated regional BMP solutions rather than constructing end-of-pipe water treatment plants.	
2.4	City of Los Angeles BOS	5/18/06	<p>Source Studies for Del Rye Lagoon and Ballona Wetlands: Throughout the CREST process, stakeholders discussed and debated the implementation of distributed watershed wide strategies and monitoring and data relevant to where these implementation strategies, as well as monitoring, would be needed. The Del Rey Lagoon or Ballona Wetlands, or any specific source identification studies requiring considerable effort and resources, were not discussed during the 10 month effort by any of the partners or stakeholders, including the RWQCB or EPA.</p> <p><i>Requested action:</i> The Bureau requests leaving source monitoring of Del Rey Lagoon at the discretion of the affected jurisdiction and consider these water bodies as a source only if under the adaptive management process, some years after the effective date, there are difficulties in meeting dry weather compliance in the estuary</p>	The TMDL only requires a natural sources identification study if the responsible agencies choose to invoke the natural sources exclusion implementation provisions of the bacteria objectives. If the reference system/antidegradation approach is used, such a study is not required.
2.5	City of Los Angeles BOS	5/18/06	<p>Location-prescriptive monitoring: The premise of the adaptive management and watershed wide implementation strategy is that there exists the flexibility to monitor where BMPs are placed and when needed to address specific questions. Existing monitoring locations in addition to an</p>	The “location-prescriptive” monitoring is a reasonable requirement given Ballona’s unique condition of having three reaches with different recreational uses along a 10 mile stretch, and the importance of insuring adequate monitoring in each of these reaches

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			<p>additional monitoring program with flexibility of location and number will allow for an efficient implementation and provide sufficient data without burdening responsible jurisdictions.</p> <p>Requested action: Remove location-prescriptive monitoring from the TMDL and allow development of a detailed monitoring plan that is consistent with the implementation plan. Specifics of monitoring can be decided in the monitoring plan development phase of the TMDL, with the participation of all stakeholders.</p>	
2.6	City of Los Angeles BOS	5/18/06	<p>A beach reference site is not appropriate for this TMDL. This TMDL uses the Leo Carrillo beach reference point to determine its compliance. However, for a 10-mile inland body of water the conditions are very different upstream. Also, inland waterbodies do not have any wave washing such as a beach that may affect the sampling results.</p> <p><i>Requested action:</i> Once an appropriate reference is identified, reconsider the TMDL schedule and the applicable limits and waste load allocations.</p>	<p>Staff acknowledges that a beach reference site may not be ideal for an inland water body and allows for a re-assessment of the waste load allocations (i.e. allowable exceedance days) upon reviewing results from on-going reference site studies being conducted by SCCWRP as discussed in the TMDL Staff Report on p. 26. Reconsideration of the TMDL to incorporate any changes resulting from these studies is scheduled to occur four years after the effective date, which is prior to any compliance deadlines.</p>
2.7	City of Los Angeles BOS	5/18/06	<p>Source monitoring of unlisted waterbodies: This TMDL lists several inland waterbodies that are not listed on the 303(d) list of impaired waterbodies. Requiring effectiveness (compliance) monitoring of waterbodies that do not have a regulatory compliance element should not be part of this TMDL's requirements.</p>	<p>A TMDL must account for, and if necessary, control all sources of the pollutants that are impairing the water body, even if those pollutants are emanating from unimpaired waterbodies. Furthermore, the fact that a waterbody is not yet listed does not prevent the Regional Board from adopting measures to achieve attainment or from adopting a TMDL. The recent decision in <i>Cities of Arcadia v. Los Angeles</i></p>

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			Requested action: Remove the compliance monitoring of unlisted waterbodies.	<i>Regional Water Quality Control Board</i> held that TMDLs and listing may properly occur simultaneously. Regional Board staff have clarified the Basin Plan Amendment language to specify that the monitoring of the unlisted waterbodies should occur at the confluence with the creek or estuary.
2.8	City of Los Angeles BOS	5/18/06	Responsible agencies and Table 7-1 Change paragraph 3 of page 30 to also include Misc. State and National Park Services as responsible parties to the watershed. Large contributors such as UCLA and Exposition Park are located within Ballona Creek and are heavily urbanized. Table 7-1: Table should include Caltrans, Misc. State, and National Park Service. Please see the attached Table 2 generated from Regional Board GIS data. Caltrans contribution is 1.88 Sq. mi. (<i>Provided by Caltrans</i>).	Regional Board staff concluded that any contributions from the largely undeveloped National and State Park lands will be covered by the reference system approach. If a source investigation shows a source outside the jurisdiction of the MS4 permit then the Regional Board will invoke other regulatory authority to control the discharge. Table 7.1 will be revised to include Caltrans.
2.9	City of Los Angeles BOS	5/18/06	The ambient monitoring program should be a responsibility shared by <u>all</u> dischargers to the Creek which includes not only MS4s and Caltrans but also minor and general NPDES dischargers, industrial permittees, and national forest and state parks.	The basin plan amendment will be modified to clarify that both ambient and effectiveness monitoring should be included in the comprehensive monitoring plan. It is not necessary to include monitoring requirements for the entities identified in the comment because they discharge to the MS4, while the monitoring is needed in the water body. The MS4 permittees are the most appropriate jurisdictions to conduct in-stream monitoring.

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2.10	City of Los Angeles BOS	5/18/06	4/06 Staff Report p. 5, sec 1.3, par 3 “Therefore, downstream standards always apply at the confluence of any two reaches.” Please reference the regulation that supports this statement	The confluence is the uppermost point of the downstream reach and water quality standards must be achieved throughout the reach.
2.11	City of Los Angeles BOS	5/18/06	“Sepulveda Channel was listed on the 303(d) list on the basis of the potential REC-1 beneficial use of Reach 2 to which it is tributary. This potential use has been amended...However, the potential REC-1 use was not modified for Sepulveda Channel therefore, it retains the potential REC-1 use.” The same logic of the “tributary rule” that was used to apply the REC-1 standard for listing this tributary on the 303(d) List is the same logic that should be used to apply the LREC-1 standard, which is the beneficial use now assigned to Reach 2. The Sepulveda Channel is not listed in the Basin Plan and therefore when the SWRCB modified the uses of the Ballona Creek, these modified uses also applied to all tributaries in the watershed. In addition, the SWRCB Order WQO 2005-0004 specifically discusses the tributaries as being channelized beginning in the 1950’s, which argues that the intent was to apply the change to the entire watershed. The REC-1 standard should be changed to LREC-1 in all tables and text throughout the staff report for the Sepulveda Channel.	A beneficial use can only be removed by a site specific use attainability analysis that makes a determination that the use does not exist and does not have the potential to exist in a given waterbody. Therefore, modifying the recreational uses of Sepulveda Channel would require a demonstration that all the criteria for the removal or downgrading of the use are met. Subsequently a separate Basin Plan Amendment would have to be adopted by the Regional Board.
2.12	City of Los Angeles BOS	5/18/06	The statement "... frequency of single sample exceedances are the most relevant to public health protection." is counter to USEPA’s November 2002	The US EPA gives states the discretion to apply the single sample maximum (SSM) limits as it sees fit in its water quality standards regulation. In the 2001 amendments to update the

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			<p>Draft Implementation Guidance for Ambient Water Quality Criteria for Bacteria, where it is noted that: “the term ‘single sample maximum’ was named with its primary use in mind, i.e., beach monitoring. In those situations, an unacceptably high value for any given sample may trigger a beach advisory or closing. The ‘single sample maximum’ values allow beach managers to quantitatively determine what an unacceptably high value is. The ‘single sample maximum’ was never to intended to be a ‘value not to be exceeded’ when referring to attainment decisions and National Pollutant Discharge Elimination System (NPDES) permitting under the Clean Water Act. Therefore, EPA is dropping the use of the term in favor of the more statistically correct term “upper percentile value.” In terms of criteria setting, the targeted level of protection is the risk level, and the most direct relationship between measurements of bacteria levels and risk level is the geometric mean of measurements taken over the course of a recreation season.”</p>	<p>bacteria objectives, the Regional Board concluded that it was appropriate to include both SSM and geometric mean objectives to protect the REC-1 beneficial use for several reasons. First, the Santa Monica Bay epidemiological study conducted in 1995 demonstrated a causal relationship between SSM values and swimming associated illness rates, demonstrating that SSM objectives are important thresholds for assessing public health risks. Second, SSM objectives are consistent with State regulations for protecting public health at beaches. Finally, SSM objectives are particularly appropriate for southern California’s wet weather conditions. In previous bacteria TMDLs adopted in the Los Angeles Region, US EPA Region IX has agreed that allowable exceedance days are considered an ‘appropriate measure’ consistent with the definition in 40 CFR 130.2(i).</p>
2.13	City of Los Angeles BOS	5/18/06	<p>Staff Report p. 12, Table 2-4 Inclusion of “% exceedance of downstream objectives” data comparison This line item should be removed from all tables in the staff report because it does not present the data adequately. For instance, sampling in Reach 2 at Overland Boulevard is not at the confluence with the estuary; however, the table projects what the exceedances would be if the REC –1 standards are</p>	<p>The purpose of including the “% exceedance of downstream objectives” in Table 2-4 is to highlight the Regional Boards concern regarding potential impacts of upstream water quality on downstream conditions. It is not intended to give an exaggerated perception of the bacteria loading.</p>

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			<p>applied to this sample. This type of extrapolation provides no benefit to the TMDL and gives a perception to the public that the bacteria loads may be worse than they actually are in some reaches or tributaries.</p>	
2.14	City of Los Angeles BOS	5/18/06	<p>06 Staff Report p. 18, Table 4-3 Inclusion of “% > REC-1 objectives” All line items in this table of “% > REC-1 objectives” should be deleted since the Overland Drain is a tributary to Reach 2 and is only required to meet the LREC-1 objectives.</p>	<p>Comment duly noted. All references to “% > REC-1 objectives” as it pertains to the Overland drain will be removed from the staff report. However, the upstream and downstream monitoring locations within the creek will retain the reference since they are located in Reach 2 which is upstream of the estuary. Also see response to 2.13</p>
2.15	City of Los Angeles BOS	5/18/06	<p>4/06 Staff Report p. 21, sec 4.4, par 2 “Inputs to Ballona Estuary from Del Rey Lagoon and the Ballona Wetlands, via connecting tidal gates, are considered non-point sources of bacterial contamination....The TMDL will require a source identification study for the lagoon and wetlands in order to make such a determination.”</p> <p>The staff report has not identified any sampling results or data that indicate that these two waterbodies are violating the water quality standards nor does the 303(d) list. Based on this, the jurisdictional agencies should not be required to conduct a very expensive source identification study. This study should be moved to the recommended study section of the staff report; thereby allowing the jurisdictional agencies the choice of whether limited financial resources would be best spent on this study.</p>	<p>Comment noted. The Department of Fish and Game (DFG) submitted preliminary data indicating that the Ballona Wetlands is not a source of bacteria, but a sink. According, Ballona Wetlands will be removed as a source, pending review of backup data, and DFG will be removed as a responsible agency. If the backup data does not confirm the preliminary findings, the TMDL will subsequently be modified to reinclude the Ballona Wetlands.</p> <p>If similar data is submitted with respect to Del Rey Lagoon, the Regional Board will consider removing the Lagoon as a source at that time. Staff notes that the source identification study is an optional study, subject to the permittees’ discretion.</p>

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2.16	City of Los Angeles BOS	5/18/06	4/06 Staff Report pp. 20-21, sec 4.4 Examples given for "non-point source" The examples given for "non-point source" are land ownership specific, and not particularly good examples of non-point sources.	The TMDL also cites Del Rey Lagoon , Ballona Wetlands, and contributions from wildlife as non-point sources
2.17	City of Los Angeles BOS	5/18/06	High Flow Suspension Language As discussed in the text on page 29 of the Staff Report, for Reach 2 the allowable days of exceedance will be based on the reference approach (17 days) or the high flow suspension, whichever is greater. In addition, for Reach 1, the high flow suspension events are not included in the calculations for determining the 10% exceedances. Since the high flow suspension factor directly impacts the Waste Load allocations, this information needs to be included in the WLA and LA tables in both the Staff Report and the Resolution. More importantly, the High Flow Suspension is not currently discussed in the Resolution; therefore language should also be added to the Waste Load Allocation section on Page 5.	Comment duly noted. Staff will revise the amendment language to note in the WLA table that the greater of the allowable exceedance days under the reference system approach or high flow suspension shall apply in Reach 2.
2.18	City of Los Angeles BOS	5/18/06	Please reference the regulation that provides the High Flow Suspension.	The Regional Board Resolution that provides the High Flow Suspension is Resolution No. 2003-010.
2.19	City of Los Angeles BOS	5/18/06	4/06 Staff Report p. 28, sec 6, par 1 "In the instances where more than one single sample objective applies, exceedances of any one of the limits constitutes an exceedance day." Please explain	For REC-1 marine objectives, exceedance any one of the fecal coliform, Enterococcus, or Total Coliform objectives will constitute an exceedance day.
2.20	City of Los	5/18/06	4/06 Staff Report p. 27, Table 6-2	Reach 1 of Ballona Creek acts as a source to Reach 2, and

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	Angeles BOS		Ballona Creek Reach 1 and Reach 2 These reaches are not tributaries to the Creek and should be removed from this table. Table 6-1 already identifies the WLAs for these reaches. In addition, all the tributaries identified in this table should not be given a WLA or LA since they are not listed on the 303(d) List.	Reach 2 acts as a source to the Ballona Estuary. Therefore Load Allocations can be assigned to these reaches. The same applies to the other tributaries which act as sources to their downstream reaches.
2.21	City of Los Angeles BOS	5/18/06	4/06 Staff Report p. 11, sec 2.2, Table 2-3 Averaging Bacteria Concentration Averaging environmental bacteria concentrations exaggerates data and may not be applicable and meaningful in bacteria analysis since data spikes can skew the averages. Median or Geometric mean better represent bacteria trends and take into account that environmental samples are not normally distributed. Standard Methods, 1010 B. Statistics, page 1-2.	Comment duly noted. The median value will replace the mean in Table 2.3. The available data did not lend itself well to the analysis of the geomean.
2.22	City of Los Angeles BOS	5/18/06	4/06 Staff Report p. 55, sec 8.2, par 2 Non-attaining samples investigation The City of Los Angeles requests performing "Accelerated monitoring" rather than daily sampling as a preliminary approach for samples that are not attaining assigned allocations.	Daily sampling is consistent with the Implementation Provisions for the Bacteria Objectives contained in the Basin Plan, which states " <i>If any of the single sample limits are exceeded, the Regional Board may require repeat sampling on a daily basis until the sample falls below the single sample limit in order to determine the persistence of the exceedance.</i> " (Regional Board Resolution No. 2001-018)
2.23	City of Los Angeles BOS	5/18/06	4/06 Staff Report p. 54, sec 8.2, par 1 Upstream reach data used to assess downstream	Upstream data collected at or near the boundary of two reaches will be an indication of conditions in the downstream

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			reach Please define how upstream reach data will be used to assess an immediate downstream reach in TMDL Effectiveness Monitoring.	reach.
2.24	City of Los Angeles BOS	5/18/06	Acknowledgement of EMD sample processing 4/06 Staff Report p. 20, sec 4.3, par 1 : Please change to “These samples were collected by.... Watershed Protection Division and analyzed by the Biology Section of the Environmental Monitoring Division.” p. 22, sec 5.1, line 9: Please add ‘...Environmental Monitoring Division (all samples were analyzed by the Environmental Monitoring Division)’	Comment duly noted. The staff report will be revised to reflect this change.
2.25	City of Los Angeles BOS	5/18/06	Map Detail. 4/06 Staff Report pp. 2-4, Figure 1 Change map on p.4, Figure 1, to reflect approximate details of the text on p. 2, par 7 and p. 4, par 2 and 3. The map, as it stands, does not give an adequate idea of the areas or borders indicated in the text.	Comment duly noted.
2.26	City of Los Angeles BOS	5/18/06	Table format 4/06 Staff Report p. 7 Change format to match previous and following pages; change format of table and page number.	Comment duly noted.
2.27	City of Los Angeles BOS	5/18/06	Unclear sentence 4/06 Staff Report p. 8, sec 2.1, par 2 Change to “an amendment to the Basin Plan in 2005 that re-designated Reach 1 as REC-2 and re-designated Reach 2 as Limited REC-1.”	Reach 1 always had a REC-2 designation. The amendment re-designated the potential REC-1 use that applied in Reach 1.
2.28	City of Los Angeles BOS	5/18/06	Clarify water quality objective 4/06 Staff Report p. 8, sec 2.1, Table 2-2 Change second column heading to “Ballona Estuary	Comment duly noted. The staff report will be revised to reflect this change.

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			(marine REC-1)” and third column heading to “Sepulveda Channel (freshwater REC-1).”	
2.39	City of Los Angeles BOS	5/18/06	Define “N” 4/06 Staff Report p. 11, sec 2.2, Table 2-3 Define N in your table with N = Number of Samples.	Comment duly noted. The staff report will be revised to reflect this change.
2.30	City of Los Angeles BOS	5/18/06	Typing error 4/06 Staff Report p. 12, sec 2.2, Table 2-4 Change “.23% Exceedance of applicable objectives” to read “Exceedance of applicable objectives”.	Comment duly noted. The staff report will be revised to reflect this change.
2.31	City of Los Angeles BOS	5/18/06	Significant figures 4/06 Staff Report p.13, sec 2.2, Table 2-5b Change 2494.75 to 2494 to be consistent with rest of the data	Comment duly noted. The staff report will be revised to reflect this change.
2.32	City of Los Angeles BOS	5/18/06	Misspelling 4/06 Staff Report p. 17, sec 4.2.1, par 2 Delete “t” in “SMBKt”. 4/06 Staff Report p. 20, sec 4.3, par 1 Please replace <u>Pollutant</u> Assessment Section by <u>Pollution</u> Assessment Section 4/06 Staff Report p. 34, sec 7.3, par 1 Currently reads “...and outlined in Table 7-1:” Should read, “... and outline in Table 7-2:”	Comment duly noted. The staff report will be revised to reflect this change.
3.1	Los Angeles County Department of Public Works (LACDPW)	5/19/06	The County of Los Angeles Department of Public Works (Public Works) would like to note that, with the exception of the Ballona Creek Estuary, none of the reaches covered by the draft TMDL are designed to support the full gamut of contact recreational usages. As the Staff Report reflects, the State Water	Comment duly noted.

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			Resources Control Board removed the Water Contact Recreation (REC-1) designation from Reach 1 and limited the REC-1 designation for Reach 2 after a detailed use attainability analysis was conducted by Regional Board staff. This de-designation reflected the fact that these waterbodies are concrete flood control channels, restricted to human access and either lack any significant recreational amounts of water during dry weather or filled with dangerous flood waters during wet weather.	
3.2	LACDPW	5/19/06	Public Works strongly supports an approach to the bacteria TMDL that applies realistic water quality objectives to these reaches, and supports as well continued beneficial use analyses to ensure that scarce municipal resources are not wasted attempting to attain water quality objectives that will never be enjoyed by any person those objectives were intended to protect.	Comment duly noted.
3.3	LACDPW	5/19/06	The implementation schedule for responsible jurisdictions electing to use the Integrated Water Resources Approach has been linked in the draft TMDL with that of Santa Monica Bay Bacteria TMDL (SMBB TMDL). However, while the 5MBB TMDL allowed 18 years to achieve compliance, this linkage reduced the implementation period for the draft TMDL to only 14 years. We suggest that staff has not demonstrated a sufficient justification for	See response to 2.1.

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			<p>this shorter compliance time period. In particular, the Cleaner Rivers Through Effective Stakeholder Total Maximum Daily Load (CREST) Technical Memorandum accompanying to the Staff Report for the draft TMDL notes the concerns of stakeholders on this shortened time period. See CREST Technical Memorandum (Crest TM), page 22. If there is any need to synchronize TMDL compliance dates, one approach (suggested also in the Crest TM) would be to link the compliance dates for the 5MBB TMDL and the TMDL for the Ballona Creek Estuary alone, and allow the extra time requested for Reaches 1 and 2 and Sepulveda Channel. Our preference, however, is for the final compliance date in the draft TMDL to be 18 years from the effective date.</p>	
3.4	LACDPW	5/19/06	<p>As set forth in the Staff Report, Sepulveda Channel was listed on the 303(d) list only because it was a tributary to Reach 2, which at the time had a full REC-1 beneficial use. As the Staff Report notes on page 6, the use attainability analysis performed by Regional Board staff caused the State Board to remove that beneficial use. Nonetheless, Sepulveda Channel retains a potential REC-1 use, despite the fact that it, like Reach 2, is entirely unsuitable for this use.</p>	See response to 2.11
3.5	LACDPW	5/19/06	<p>The draft TMDL assigns waste load allocations (WLA) only to the stormwater conveyance system leading into Ballona Creek and Estuary. As the Staff</p>	See response to 2.8 and 2.9.

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			<p>Report notes, there are a number of other regulated point sources, including dischargers with individual National Pollutant Discharge Elimination System (NPDES) permits, general industrial and general construction stormwater permit holders. However, as the Staff Report further notes on page 16, "the bacteria loads associated with these discharges are largely unknown, since most do not monitor for bacteria." Moreover, the draft TMDL does not take into account the potential impact of nonanthropogenic sources of bacteria, such as that from birds, waterfowl, and other wildlife. The Federal regulations governing TMDLs require that all point, nonpoint, and background sources of pollutants of concern be described in the TMDL. Attachment A already provides that each NPDES permit assigned a WLA shall be reopened or amended at re-issuance. . . to incorporate the applicable WLAs as a permit requirement. It should be explicit that this undertaking will include all private NPDES permit holders. The draft TMDL also should provide that Regional Board staff will take steps to require private NPDES permittees to monitor for bacteria discharges. Control of these discharges before they enter into the stormwater conveyance system will enhance the ability of the responsible jurisdictions and agencies to meet the TMDL bacteria targets in a timely fashion and would</p>	<p>Regional Board staff respectfully disagree. The intent of the reference system approach is to allow for exceedances due to non-anthropogenic sources of bacteria</p>
3.6	LACDPW	5/19/06	Waste load allocations (WLAs) and load allocations	See response to 2.20

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			<p>(LAs) should be assigned only for the impaired waterbodies on the Section 303(d) list. For example, Table 7.21.2b prescribes WLAs and LAs at four non-303(d) listed waterbodies, Benedict Canyon Channel, Centinela Creek, Ballona Wetlands, and Del Rey Lagoon. Moreover, as the Staff Report indicates on page 21, it has not been determined whether the sources of bacteria from Ballona Wetlands and Del Rey Lagoon are anthropogenic, a situation that warrants a study to make such a determination. Therefore, LAs should not be prescribed for these locations until the studies to be conducted by the City of Los Angeles (in Del Rey Lagoon) and the California State Lands Commission and the Department of Fish and Game (in Ballona Wetlands) identify the bacterial sources in these areas.</p>	
3.7	LACDPW	5/19/06	<p>When waterbodies are listed as impaired on the 303(d) list, that listing does not specify impaired points in the waterbodies, but includes the waterbodies as a whole. Therefore, it is not appropriate for the draft TMDL to prescribe the WLAs and LAs to be achieved at specific points within the waterbodies as apparently required in Table 7.21.2b of Attachment A. Also, the inclusion of these apparent compliance points shown in Table 7.21.2b of Attachment A appear to require compliance monitoring at these points. In the "Monitoring" and "12 months after the effective date of the TMDL" sections of Attachment A,</p>	See response to 2.5

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			<p>responsible jurisdictions and agencies are required to conduct compliance sampling in Centinela Creek and Benedict Canyon Channel as well as the "tributaries" of Ballona Estuary and Ballona Creek Reaches 1 and 2. As noted above, monitoring should not be required in reaches that are not listed as impaired. Moreover, the responsible jurisdictions and agencies must be allowed to select the specific monitoring locations to demonstrate the compliance of the WLAs and LAs within the impaired reaches. These jurisdictions and agencies are better able than the Regional Board to select appropriate sampling locations based on a variety of factors, including, but not limited to, site logistics, safety, costs, and scientific evidence. The locations would be presented in the required Coordinated Monitoring Plan, which is subject to Regional Board staff's review and approval. (It is, of course possible, that the monitoring locations chosen</p>	
3.8	LACDPW	5/19/06	<p>Although it was not specifically stated in Attachment A and the Staff Report, it appears that the Arroyo Sequit Watershed and Leo Carrillo Beach were used as a reference system for the subject watershed. We understand that the Regional Board is leading a study, in which Public Works is a participant, to explore alternative reference systems. However, for the record, we reiterate our concern with respect to using such watersheds as a reference system for the Ballona Creek Watershed. In particular, we note that the reference watershed does</p>	See response to 2.6

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			not contain the estuary system that Ballona Creek Watershed has. We hope this issue will be adequately addressed when the TMDL is reconsidered at the four-year point.	
3.9	LACDPW	5/19/06	In the "Implementation" section of Attachment A, it is noted that the Regional Board intends to reassess the WLAs for Benedict Canyon Channel, Sepulveda Channel, and Centinela Creek based on the results of the required compliance monitoring, and/or any voluntary beneficial use investigations. We already have commented regarding the inappropriateness of including WLAs for Benedict Canyon Channel and Centinela Creek. We also respectfully suggest that the Regional Board open the reconsideration of the TMDL to include all factors relevant to the TMDL, including, but not limited to, TMDL design storms, the results of nonanthropogenic factors, difficulties in implementation, and other issues that may arise in the first four years of the implementation of the TMDL	All relevant issues pertaining to this Bacteria TMDL will be considered at the re-opener.
3.10	LACDPW	5/19/06	We have already commented on aspects of the "Monitoring" section of the TMDL as it relates to the location of various sampling sites. However, because these monitoring provisions, like the rest of the TMDL, are not self-executing, and because directives to conduct monitoring are subject to the requirements of Water Code, Sections 13225 or 13267, we note that the monitoring requirements will be subject to the cost-benefit analysis required	NPDES permit monitoring provisions are issued pursuant to Water Code section 13383, which does not require a cost-benefit analysis. If any orders are issued pursuant to Water Code section 13267 or 13225, the requirements of those sections will be complied with.

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			<p>in those statutes to be performed by the Executive Officer. The same analyses would be required in the event of a compliance investigation.</p>	
3.11	LACDPW	5/19/06	<p>The allowable exceedance for REC-2 usage is stated as 110 percent of the REC-2 standard. We believe this is a misstatement of the Basin Plan water quality objectives, which require that at least four single REC-2 samples per month must not exceed 2,000/100 ml for fecal coliform and that 10 percent of those samples must not be greater than 4,000/100 ml. Further, we believe that the 2,000 and 4,000 values must be applied to a suitable reference reach to develop an allowable number of exceedance days for REC-2 use, similarly to the ones developed for REC-1 and limited REC-1 uses</p> <p>Requested Action: Revise the statements regarding the allowable exceedance for REC-2 to properly represent the Basin Plan water quality objectives. Develop the WLAs for REC-2 in terms of allowable exceedance days based on a suitable reference system.</p>	<p>The Basin Plan objectives set to protect the REC-2 beneficial use are based on fecal coliform density. The Basin Plan states that no more than 10% of samples shall exceed 4000 MPN/100 ml and that the geometric mean of the samples shall not exceed 2000 MPN/100 ml. The TMDL also uses the 10% exceedance frequency (not 110% as stated by commenter) for the REC-2 objectives.</p> <p>Regarding the application of the reference system approach to the REC-2 objectives, the reference system approach is not currently applicable to the REC-2 objectives. This is because the REC-2 objectives already allow for some exceedances (10% of samples) of the 4000 MPN/100 ml limit for fecal coliform. This is in contrast to the single sample limits for fecal indicator bacteria set to protect the REC-1 use. When the REC-1 bacteria objectives were updated in 2001, they were expressed as single sample maximums (SSMs) with no allowable exceedance frequency. During the 2001 amendments, the REC-2 objectives were not revised in any way and therefore retained the 10% allowable exceedance frequency provision.</p> <p>The implementation provisions that incorporated the reference system approach were intended to recognize that some exceedances of the REC-1 SSM objectives were likely, even at a reference site, and so incorporated an allowance to apply a</p>

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				<p>site-specific exceedance frequency when implementing these objectives.</p> <p>To apply the reference system approach to the REC-2 objectives, the Regional Board would need to amend the current REC-2 objectives to replace the 10% exceedance frequency with provisions to allow for a site-specific exceedance frequency based on a reference system approach.</p>
3.12	LACDPW	5/19/06	<p>The California Environmental Quality Act (CEQA) checklist prepared by staff acknowledges that the implementation of the draft TMDL will cause a "significant adverse effect" on the environment. Despite this finding, the CEQA documentation provided with the draft TMDL does not adequately discuss those effects or suggest alternatives or mitigation. Even though staff asserts that its CEQA review for the draft TMDL represents a Tier 1 review (with more detailed CEQA analysis to be left for the lead agencies for individual implementing projects), this does not abrogate the Regional Board's responsibility to fully discuss the general environmental impacts of TMDL implementation (effects which can readily be determined from even a cursory examination of the possible implementation options discussed in the Staff Report or in the accompanying CREST report.</p>	<p>The commenter fails to identify which impacts contain an inadequate level of analysis or how the analysis is inadequate. It is difficult to effectively respond to this comment given its vagueness. The finding of the Executive Officer, Jonathan Bishop, based on the CEQA checklist and the Staff Report was that the implementation of the TMDL could have a "significant adverse effect" on the environment. In addition, the Executive Officer found, "... there are feasible alternatives and/or feasible mitigation measures that would substantially lessen any significant adverse effect." As required, Regional Board staff did consider a reasonable range of alternative implementation measures, mitigation measures, environmental, economic, and technical factors, population and geographic areas, and specific sites. The CEQA documents discuss these mitigation measures in some detail. The level of CEQA review in these documents is complete and proper given that project-level implementations will require an independent environmental review (Pub. Res. C. § 21159.2). The method by which a discharger decides to achieve compliance, however, is a matter that is beyond the scope of analysis that the Regional Board is required to take (Pub. Res. C. § 21159(d.)). Staff has analyzed reasonably foreseeable environmental</p>

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				<p>impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts of feasible methods of implementing the TMDL. Because the Regional Board does not prescribe the method of achieving compliance with the TMDL, staff cannot identify all project-level impacts (and associated mitigation measures) that might occur from the myriad of structural and non-structural implementation strategies that could be used to achieve the TMDL. If the commenter believes that a particular alternative, mitigation measure, location, or other matter should be analyzed, the Regional Board staff would request the discharger identify exactly what it is.</p>
3.13	LACDPW	5/19/06	<p>The preparation of a Basin Plan Amendment is a "certified regulatory program," which does not require preparation of all of the CEQA documents that otherwise would be required of an agency approving a project. Nonetheless, the environmental documentation under a "certified regulatory program" still must meet the substantive requirements of CEQA. And, the specific requirements of the CEQA guidelines for the Regional Board require that staff prepare a document describing the project, alternatives to the project and, if the project is found to have significant effects on the environment, "mitigation measures to avoid or reduce and significant or potentially significant effects that the project may have on the environment." 14 Cal. Code Reg. Section 15252. The CEQA documentation cited by staff is the Staff Report and the CEQA checklist as well as the to-be-</p>	<p>The CEQA checklist, staff report, and other documents in the record fulfill the Regional Board's substantive CEQA obligations. There is no discretion in establishing a TMDL that is derived from existing bacteria objectives. The discretion, for which appropriate alternatives are considered, is contained within the program of implementation. Specifically, alternatives analysis in this context relates to reasonably foreseeable alternative means of compliance that would have less significant adverse impacts than the reasonably foreseeable means of compliance. The staff report contains a detailed analysis of alternative methods of implementation, including two different strategies for achieving compliance that were developed by the stakeholders.</p> <p>The Regional Board does not prescribe the method of achieving compliance with the TMDL, staff cannot identify all project-level impacts (and associated mitigation measures) that might occur from the myriad of structural and non-structural implementation strategies that could be used to achieve the</p>

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			<p>completed response to comments. With respect to the Staff Report, it does not appear to discuss with any detail any of the environmental impacts of implementation of the draft TMDL, any project alternatives, or any mitigation of environmental effects or potential environmental effects.</p> <p>The CEQA checklist does contain some analysis of the impacts and potential mitigation measures; however, the discussion in checklists prepared for other Basin Plan Amendments, still does not meet the requirements of CEQA. Required mitigation is often discussed in conclusory and tautological terms. For example, in discussing the potential impacts of the draft TMDL on earth disruptions and displacement (checklist Item 1[b]), the checklist notes only that a potential adverse impact “could be managed to less than significant levels if structural Best Management Practices (BMPs) are properly designed and sited in areas where the risk of soil disruption is Minimal.” Similar conclusory or inadequate discussions of mitigation can also be found in the discussions of parking) Item 13[b]), transportation/circulation (13[c]-[d]), human health (17[a]), recreation (19[a]) and other areas. In this discussion, mitigation is reduced to a hope that mitigation will occur during construction activities.</p>	TMDL.
3.14	LACDPW	5/19/06	In the discussion of air emission (Item 2[a]), it is	Construction activities undertaken to implement this TMDL, as

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			<p>admitted that the construction and operation of draft TMDL implementation structures could have “significant” impacts, “especially in areas where the region is designated nonattainment for relevant air pollutants.” It is widely known that in the County of Los Angeles, along with the rest of Southern California, is nonattainment for a variety of air pollutants. Yet there is no discussion of these impacts or the potential pollutants involved.</p>	<p>all construction activities, can in various ways, be mitigated to relieve some air quality impacts. The CEQA checklist discusses with appropriate detail for this level of environmental review, the potential impacts and the overriding environmental considerations.</p>
3.15	LACDPW	5/19/06	<p>In the discussion of the diversion of surface water (Item 3[a]), it is concluded only that impacts will likely be positive, as the diversion of stormwater from open channels “will likely reduce the potential for flooding during storm events.” With respect, the channels in question are designed carefully to maximize the movement of flood waters so as to protect life and property. Activities that impact that design, whatever the purpose, may adversely, not positively, affect the ability of the flood control channels to handle peak stormwater flows. In the specific discussion of flooding (Item 3[c]), the checklist acknowledges that diversion and storage of stormwater would result, an important environmental effect given the flood control purpose of the waterways covered by the draft TMDL. However, the checklist does not discuss these impacts nor the potential flooding impacts of diverting stormwater into culverts at places such as school yards (see Staff Report, page 43). There also is no discussion of the impacts on school activities</p>	<p>As observed by the commentor, the CEQA checklist included that the TMDL could result in an alteration to the course of flow of flood waters. The CEQA checklist noted “Changes in surface water runoff resulting from the use of infiltration devices and other structural BMPs would be considered a positive environmental impact... if properly sited and designed, treatment strategies will not reduce the flood control functions ...they will likely reduce peak floodwater flows, would be a public benefit...” The Regional Board does not prescribe the method of achieving compliance with the TMDL, staff cannot identify all project-level impacts (and associated mitigation measures) that might occur from the myriad of diversions and alterations that could be used to achieve the TMDL. Therefore, specific appropriate mitigation cannot be specified. However, channels can be constructed/modified properly such as to not increase the danger of flooding.</p> <p>The cost estimates for cisterns detailed on page 43 of the staff report assumed cisterns would be installed at schools and government facilities since these types of controls are more easily implemented on these types of land uses. The temporary</p>

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			<p>from culvert construction or other TMDL implementation activities on school or public property. (See Item 14[c].)</p>	<p>impacts of construction, including culvert construction, are addressed in the CEQA checklist in general terms, as appropriate, in the consideration of construction effects in items 2(a) Air, 6(a) Noise, 13(c), (d), (e), (f) Transportation/circulation. As noted in the CEQA checklist, the potential for flooding at schools and government facilities would be less, as such structures “would likely reduce peak flows.” Section 14c of the CEQA checklist specifically refers to “a need for new or altered governmental services” at schools. While school facilities may offer opportunities for stormwater collection and reuse through cisterns, such facilities are not expected to significantly increase school maintenance demands, or other governmental services in a manner that could result in a change in the physical environment.</p>
3.16	LACDPW	5/19/06	<p>Similarly, while the checklist acknowledges (in Item 16[e]) that there will be impacts on the storm drain system from implementation of the draft TMDL, those impacts are only described as "positive" with the only adverse impacts being "short-term noise and traffic impacts." This discussion again does not discuss the potential for adverse impacts on the ability of the flood control system to handle flood waters during TMDL implementation construction or thereafter.</p>	<p>Potential impacts to the ability of the creek to handle flood waters as a result of TMDL implementation are addressed in section 3c of the CEQA checklist. Section 3c, in part, states that, “the proposal may result in the diversion and storage of a portion of storm water, altering its current course of flow in the creek. However, if properly sited and designed, treatment strategies will not reduce the flood control functions in the region and therefore these impacts would be less than significant. Moreover, they will likely reduce peak floodwater flows, would be a public benefit, as some of these peak flows constitute a potential flooding hazard and/or a safety hazard to anyone in their near-vicinity.” The temporary impacts of construction can be mitigated also, such as by constructing during the dry season. Complete and detailed plans and mitigation would have to be addressed in project level CEQA review.</p>

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3.17	LACDPW	5/19/06	In the discussion of noise impacts, (Item 6[b]), it is concluded that "it is not foreseeable that this proposal will result in exposure of people to severe noise levels." However, Public Works has determined that the noise of pumping of storage areas for stormwater, which is a foreseeable consequence of the implementation strategies outlined for the draft TMDL, is severe. In fact, Public Works was forced to halt its use of vacuum trucks to clean out a continuous deflective separator unit in Culver City designed to collect trash, a unit that would be similar in concept and operation to the type of structural BMPs used to implement the draft TMDL. Public Works was forced to stop the use of the vacuum truck due to resident complaints about noise.	Regional Board staff acknowledge that using vacuum trucks could result in significantly elevated noise levels, and encourage agencies to explore other less intrusive technologies for their cleaning operations. Furthermore, the CEQA Checklist does discuss the potential noise impacts and recognizes that they would be short-term in nature as CDS units require only seasonal maintenance. The checklist also discusses potential mitigation measure for short-term noise impacts such as designing passive BMPs that require less frequent maintenance, scheduling of maintenance during mid-day hours, and noise monitoring to ensure levels remain below acceptable levels (Item 6a.)
3.18	LACDPW	5/19/06	In the discussion of the impacts on public services (Item 14), there is no discussion of the impacts on public services caused by the need to spend multiple millions of dollars on TMDL implementation and monitoring. Nor is there any discussion in the Public Services Section on the impacts on public parks, school yards, or other public areas from construction activities required to implement the draft TMDL. The checklist instead concludes that there will be no impacts on public services, beyond a need for increased monitoring and maintenance of structural BMPs as well as the need for new governmental services to address nonstructural BMPs, such as	Potential impacts on public services caused by the need to pay for implementation and monitoring are economic impacts, which do not contribute to changes in the physical environment, which is the purview of CEQA. The potential temporary impacts of construction activities are generally addressed in the CEQA checklist, as appropriate, in items 2(a) Air, 6(a) Noise, 13(c), (d), (e), (f) Transportation/circulation. These potential impacts could apply to public parks, school yards, and other public areas. Impacts relating to increased monitoring and maintenance and a need for new or altered governmental service were not discussed because the associated increased cost is not an "environmental" impact that involves a change in the physical

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			education. However, these impacts are not analyzed and there is no suggested mitigation.	environment. Other impacts relating to increased monitoring and maintenance and new governmental services such as public education and outreach would be considered positive impacts, resulting in improved water quality.
3.19	LACDPW	5/19/06	Also, the checklist finds that there would be no cumulative impacts from the implementation of the draft TMDL, a conclusion that appears to be belied by the discussion of environmental impacts in the checklist itself	While the checklist discusses a number of environmental factors that could potentially be affected, these would be project-level impacts. Staff has indicated reasonably foreseeable environmental impacts of the TMDL as an overall program. Any analysis of cumulative impacts of specific projects would need to be conducted at a subsequent, project level because they would involve the consideration of a specific BMP or treatment system, which the Water Board is prohibited by law from specifying. (Wat. C. § 13360.) At this stage, any more particularized conclusions about cumulative impacts would be speculative. Nevertheless, to the extent that the Regional Water Board cannot control the manner of compliance, and cannot guarantee that each will be properly implementation project would be performed with proper siting and design criteria, it is reasonably foreseeable that implementation of the TMDL could result in some significant adverse impacts. The checklist has been written accordingly and as stated in the checklist, "...the necessity of implementing the federally required TMDL to protect human health by removing the bacterial impairment from Ballona Creek, Ballona Estuary, and Sepulveda Channel, (an action required to achieve the express, national policy of the Clean Water Act) outweigh the unavoidable adverse environmental effects."
3.20	LACDPW	5/19/06	Generally, the checklist provides only a "once over lightly" approach to environmental analysis, an	Regional Board staff respectfully disagree with the commenter's characterization of the CEQA analysis and

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			<p>approach which does not, we respectfully suggest, meet the requirements of CEOA. More rigorous analysis is required, as was held recently by the Court of Appeals in <i>City of Arcadia v. State Water Resources Control Board</i> (2006) 135 Cal. App. 4th 1392.</p>	<p>believe it fully complies with all applicable requirements, including the <i>City of Arcadia</i> decision.</p>
4.1	County Sanitation Districts	5/19/06	<p>Although we understand that the Regional Board must proceed with developing numerous TMDLs for the region, we are afraid that it may be doing so without fully recognizing the limitations above. We strongly urge the Regional Board to proceed cautiously using a gradual iterative approach that allows for reevaluating implementation efforts, includes re-opener clauses that allow changes in requirements (both tightening or relaxing as appropriate) without conflicting with compliance deadlines, strives for reasonable water quality standards and actions, recognizes the limitations and uncertainty in the scientific approach, and does not force the regulated community to spend excessive funds without knowing that it will yield the results expected. This need to proceed cautiously and reasonably is supported by both Federal and State regulations, and clearly outweighs the need to be overly restrictive in setting critical periods, safety factors, and TMDL requirements.</p>	<p>Comment duly noted. The Regional Board supports an iterative approach that allows for reevaluating implementation efforts, while working towards final compliance in a timely manner.</p>
4.2	County Sanitation Districts	5/19/06	<p><u>Reference Site</u> The proposed TMDL is apparently using the Leo Carrillo beach site as a reference site. These</p>	<p>See response to 2.6. Five years of weekly data is equivalent to one year of daily</p>

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			<p>reference data were collected at a sampling site located in the ocean 50 yards from the outlet of a stream that drains a largely undeveloped “natural” watershed. It seems a particularly inappropriate reference for the majority of the water bodies addressed in this TMDL, which are located miles inland in lined channels, contain freshwater, and are monitored using different sets of indicators and threshold levels.</p> <p>Setting aside these concerns for the moment, the Districts have additional issues related to the use of an exceedance target based on the data from the Leo Carrillo site. Specifically, we are concerned that in this TMDL, for the dry weather period, the target number of exceedances is zero at monitoring sites in the REC-1 and LREC-1 designated reaches. This target is inappropriate for several reasons. First, the statistics are questionable. The five years of weekly sampling at the Leo Carrillo reference site amount to fewer total samples than would be collected during a single season of daily sampling. We do not think that it is possible to conclusively determine that the reference site has truly shown a zero level of exceedances based on daily sampling, or that the results from this site can be directly applied to other sites.</p> <p>Second, the historical sampling at the Leo Carrillo State Beach reference site was done 50 yards from</p>	<p>sampling (assuming a sampling frequency of 5 days per week). Furthermore, under contract to the Regional Board, SCCWRP has analyzed an additional year of data, which also showed no exceedances during summer dry weather.</p> <p>With regard to the dilution effect, the more recent data from Leo Carrillo Beach was collected from the wave wash rather than 50 yards away and still showed no exceedances of the bacteria objectives during summer dry weather.</p> <p>With regard to the Noble et al. study, the beaches away from freshwater outlets did not necessarily meet the criteria for a reference beach. Based on the analysis of the data from Leo Carrillo Beach, which was identified as an appropriate reference beach under the SMBBB TMDL, there were no exceedances due to natural sources recorded during summer dry weather. During winter dry weather, Leo Carrillo Beach has historically exceeded 3% of sampling days and this allowance for exceedances due to natural sources is incorporated into the TMDL.</p>

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			<p>the creek outfall, allowing for substantial dilution with ocean water. No comparable dilution can be expected in inland waters, and therefore without dilution bacterial indicator densities may well be higher, not only during summer dry weather but also in the winter dry weather and winter wet weather time periods. In addition, a recent study of selected Southern California beaches, Noble et. al. (1999), suggests that approximately 5% of dry weather samples at beaches away from freshwater outlets will exceed bacteriological objectives. The proposed dry weather target does not address this naturally occurring background level of exceedances. The Districts note the language in the SMBBB TMDL stating “...there is uncertainty about how much the shoreline monitoring data is under-estimating wet-weather exceedances at Leo Carrillo Beach, given that the sampling point is located 50 yards away from the freshwater outlet, rather than in the wave wash”. In summary, the Districts recommend that a more appropriate reference site be identified.</p>	
4.3	County Sanitation Districts	5/19/06	<p><u>Natural Sources Exclusion</u> As the draft TMDL indirectly suggests in Section 4 (page 16), a Natural Source Exclusion Provision is needed for all inland and shore adjacent waters. Extensive data confirm that indicator bacteria are ubiquitous in inland waters and along the shoreline of Santa Monica Bay. In most cases these bacteria,</p>	<p>It is not the intent of the TMDL to suggest or infer that a natural source exclusion provision is needed. The implementation provisions for the bacteria objectives, as amended in 2002, allow the use of either a reference system/antidegradation approach or a natural sources exclusion approach to implementing the bacteria objectives through TMDLs. The intent behind the reference system approach is</p>

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			<p>even the enteric species, are not from human sources but are from vegetation, organic material, birds, and other animals. Restricting the Natural Sources Exclusion only to selected “natural” sources (i.e., Del Rey Lagoon and Ballona Wetlands) fails to recognize that significant enteric bacteria from animal sources will accumulate in any runoff collection system, because the birds and animals are present and active throughout the watershed. This includes the most anthropogenically altered areas (e.g., birds are present on roofs, in parking lots, on the roadway, etc.) and not just in wetland areas. Total coliform bacteria can be present anywhere organic material exists, and are even less useful as an indicator for inland waters. The Districts are concerned that failure to acknowledge this reality and allow for appropriate studies and characterization of the scale of the “natural” component, will lead to one of two outcomes: 1) The TMDL targets will not be achieved; or 2) Great cost and effort will be needed to build a defacto collection and treatment system for dispersed bird and animal waste.</p>	<p>that it allows for exceedances due to natural sources throughout a watershed.</p>
4.4	County Sanitation Districts	5/19/06	<p><u>Safety</u> The Districts and other stakeholders have repeatedly expressed concerns that many inland reaches of waterbodies are not appropriate or safe locations for recreation. We recommend that, for all inland waterbodies in this and future TMDLs, the</p>	<p>Comment noted. Fences, gates and restricted access are sometimes a practical necessity for public safety; however, restricting access is not a water quality BMP and is not a method to avoid improving water quality, especially where downstream contact recreation is an appropriate use.</p>

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			<p>stakeholders, in conjunction with the regulator(s), should conduct a thorough review of each reach of each waterbody, identifying all areas where recreational use is inappropriate. Specifically, this should include all sheer-wall lined channels, all fenced and gated portions of channels, all areas that are designated as no trespassing areas, as well as any areas without safe access facilities such as stairs, sections of smooth lined slippery concrete and fast flowing water (it can be nearly impossible to stand up or climb out of the relatively shallow “low-flow” center channels present in many storm drains), etc. The Los Angeles County Department of Public Works should be able to identify all sections of the waterbodies where access is prohibited.</p> <p>In addition, appropriate personnel from County Rescue and Flood Control should be brought into this process to provide their professional assessment regarding whether other portions of these waterbodies should be prohibited from access, and for their assessment as to the suitability of any remaining areas for recreation. In addition to other concerns, they may have information about the potential risk for flash flooding due to storms, or to upstream water releases for which there is no warning system. As a result of these assessments, it is expected that additional fencing, gates and warning signage may be required, and completion of these barriers to access may be appropriate as one of</p>	<p>The Regional Board supports all efforts to appropriately ensure public safety and, in addition, is supportive of the reviewing use determinations of channelized waterbodies in conjunction with stakeholders, and appreciates the Districts’ offer to take the lead in generating the review. Any review, however, will need to comply with all applicable legal requirements, including the a site specific use attainability analysis consistent with 40 CFR 131.10.</p> <p>An additional method of addressing concrete and sheer-wall channels is discussed in the Regional Board’s hydromodification policy, “Resolution on the Impacts from Hydromodification on the Water Quality and Beneficial Uses of Water Courses in the Los Angeles Region (February, 2005)”, which supports restoration efforts along the highly modified urbanized waterways.</p>

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			the BMPs in this and future inland waters TMDLs.	
4.5	County Sanitation Districts	5/19/06	<p><u>High Flow Suspension</u> The high flow suspension proposed in this TMDL suggests that, in waterbodies where contact would be hazardous due to high flows (i.e. during rain events), the beneficial use targets should be temporarily lifted. The Districts appreciate this recognition of safety issues for possible recreational users, but believe that this consideration needs to be a focus of this and future TMDLs. In the case of the proposed high flow suspension, the Districts note that this is estimated to account for only 16 days in the Ballona Creek watershed. As suggested in Comment No. 3 above, flash flooding is a real concern in many inland waterbodies. It is likely that such flooding events are a possibility on a far greater number of days than simply those days when historical review confirms high flow. Again, it is the Districts' recommendation that appropriate agencies are brought into the process to identify all areas and times where recreational use is hazardous.</p>	See response to 4.4.
4.6	County Sanitation Districts	5/19/06	<p><u>Rain Day Exclusion</u> Irrespective of Comment No. 4, above, the Districts question the determination that beneficial use targets only be lifted on days when contact would be hazardous due to high flows. The Los Angeles County Health Department issues rain advisories after every significant rain event (defined as 0.1 inch</p>	The County Health Department issues rain advisories because the waters after rain events do not meet water quality standards. It is the goal of the Regional Water Board to bring the waters into standards. The Regional Board will not restrict a beneficial use due to poor water quality.

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			<p>or greater). The advisory is to avoid water contact for 72 hours after the end of the rain. Using this approach, it would be expected that at a minimum 30 to 50 or more days in each year should be excluded from consideration for assessment of TMDL compliance.</p>	
4.7	County Sanitation Districts	5/19/06	<p><u>Beneficial Use Designations</u></p> <p>The Districts were encouraged to see the REC-2 designation assigned to certain reaches in recognition of the limited or prohibited recreational access in these reaches and low likelihood of direct water contact. We recommend that if additional portions of waterbodies are found to be unsafe or prohibited for access that they should also be considered for being downgraded to a REC-2 designation. The LREC-1 standards are so close to the full REC-1 standards that the differences are expected to be insignificant for compliance. For these LREC-1 designated locations we would recommend further evaluation as to whether REC-2 might be a more suitable designation.</p>	<p>A beneficial use can only be removed by a site specific use attainability analysis that makes a determination that the use does not exist and does not have the potential to exist in a given waterbody. Therefore, modifying the recreational uses of other reaches would require a demonstration that all the criteria for the removal or downgrading of the use are met. Subsequently a separate Basin Plan Amendment would have to be adopted by the Regional Board.</p> <p>The LREC-1 use designation for Reach 2 is a result of a recent Basin Plan Amendment (State Board Resolution No. 2005-0015) therefore further evaluation is not necessary.</p>
4.8	County Sanitation Districts	5/19/06	<p>The standards for traditional bacteriological indicators were developed from epidemiological studies in waters known to be contaminated with sewage. Their applicability to runoff with minimal or no human source is questionable. As the recent Mission Bay epidemiological study concluded, high</p>	<p>The standards for traditional bacteriological indicators were developed from epidemiological studies in waters contaminated by various sources. The anthropological component of runoff in the Los Angeles region has not been established. While the Mission Bay study failed to find a correlation between bacterial indicators and swimmer illness in</p>

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			<p>levels of indicators flowing to beaches were not having a health effect on swimmers. The Districts recommend that any bacteria TMDL include re-openers at regular intervals, where the results of research can be fully incorporated into the TMDL, even where this might mean that the original targets are removed, replaced with new values based on different methodologies or measurements, and otherwise adjusted based on revised information.</p>	<p>San Diego, the Santa Monica Bay epidemiological study conducted in 1995 demonstrated a causal relationship between traditional bacterial indicators and swimming associated illness rates, with waters contaminated by storm drains/runoff. Sewage indicators and bacterial indicators from human and other sources are an active area of research. As theory is developed, new methodologies are established with confidence, and guidance is promulgated by EPA, the Regional Board will make the appropriate adjustments to recommended techniques and water quality standards with appropriate changes to the Basin Plan.</p>
5.1	Caltrans	5/19/06	<p>Linking the Ballona Creek Bacteria TMDL schedule to the Santa Monica Bay Beaches (SMBB) Bacteria TMDL is neither appropriate nor feasible. The SMBB Bacteria TMDL has an effective date of July 15, 2003. Linking the two TMDLs in effect , would reduce the Ballona Creek implementation activities by four years. Since Ballona Creek is a much larger watershed then the SMBB, it would not be feasible to have a shorter timeframe to comply with bacteria TMDL requirements. Especially if a phased iterative process will be issued to implement distributed BMPs</p>	<p>See response to 2.1</p>
5.2	Caltrans	5/19/06	<p>Discussions that occurred during the CREST process are not accurately reflected in the Report. CREST was a collaborative process that included several discussions of schedule and compliance strategy. However there was no consensus that the Ballona Creek Bacteria TMDL and the SMBB Bacteria</p>	<p>Throughout the CREST process, Regional Board staff maintained that the schedule for this TMDL would be linked to that of the SMMB Bacteria TMDL. As noted by the commenter, the stakeholders could not come to a consensus on an alternative final compliance date.</p>

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			TMDL would have the same schedule.	
5.3	Caltrans	5/19/06	Remove the requirement of source monitoring of unlisted waterbodies. The TMDL lists several inland waterbodies that are not listed on the 303(d) list. Performing effectiveness (compliance) monitoring of waterbodies that do not have a regulatory compliance element is an unnecessary use of limited resources	See response to 2.4
5.4	Caltrans	5/19/06	Remove Del Rey Lagoon and Ballona Wetlands from the TMDL. Throughout the CREST process, implementation of distributed watershed-wide strategies and monitoring was discussed and data relevant to where these implementation strategies and monitoring would be needed was presented. Del Rey Lagoon and Ballona Wetlands were not mentioned during these discussions. Under the adaptive management process, would it be possible to determine (some years after the effective date and if there are difficulties in meeting dry-weather compliance in the estuary) whether these two waterbodies could be considered a source?	See response to 2.15.
5.5	Caltrans	5/19/06	Remove location-prescriptive monitoring from the TMDL and allow development of a detailed monitoring plan that is consistent with the implementation plan. The premise of the adaptive management and watershed wide implementation strategy is that there exists the flexibility to monitor where and when needed. Existing monitoring locations in addition to an additional monitoring	See response to 2.5

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			program with flexibility of location and number will allow for an efficient implementation and provide sufficient data without burdening responsible jurisdictions.	
5.6	Caltrans	5/19/06	The reference site may not be appropriate for an inland body of water. Once an appropriate reference is identified, reconsider the TMDL schedule and the applicable limits and waste load allocations. This TMDL uses the Leo Carrillo beach reference point to determine its compliance. The conditions are different for inland water bodies, as inland waterbodies do not have any wave washing such that may add a dilution effect..	See response to 2.6
5.7	Caltrans	5/19/06	Consider actual use of the estuary and the allocation of exceedances during wet-weather. During wet-weather surfers may use the beaches to take advantage of the waves – a use [or activity] that would not occur in the estuary, which is primarily used by boaters during dry-weather. Therefore, wet-weather compliance of the estuary should be re-examined.	REC-1 is an existing use in Ballona Estuary in both wet and dry weather. The TMDL was developed to protect this beneficial use along with the LREC-1 and REC-2 uses..
5.8	Caltrans	5/19/06	The examples given for “non-point source” in section 4.4 are land ownership and therefore not appropriate	See response to 2..16
5.9	Caltrans	5/19/06	Section 6 states that the “frequency of single sample exceedances are the most relevant to public health protection.” This runs counter to U.S. EPA’s	See response to 2.12

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			<p>November 2002 Draft Implementation Guidance for Ambient Water Quality Criteria for Bacteria , which notes: <i>The term “single sample maximum” was named with its primary use in mind, i.e., beach monitoring. In those situations, an unacceptably high value for any given sample may trigger a beach advisory or closing. The “‘single sample maximum’ values allow beach managers to quantitatively determine what an unacceptably high value is. The ‘single sample maximum’ was never intended to be a value ‘not to be exceeded’ when referring to attainment decisions and National Pollutant Discharge Elimination System (NPDES) permitting under the Clean Water Act. Therefore, EPA is dropping the use of the term in favor of the more statistically correct term ”upper percentile value.” In terms of criteria setting, the targeted level of protection is the risk level, and the most direct relationship between measurements of bacteria levels and risk level is the geometric mean of measurement taken over the course of a recreation season.</i></p>	
6.1	Department of Fish and Game	5/19/06	<p>We were heretofore not made aware that RWQCB requirements were being placed on the Ballona Wetlands, and only recently learned of this proposed amendment from the State Lands Commission. Because the Department’s South Coast Region staff does not have extensive expertise in TMDL’s, we need additional time to consult with other agencies and Department regions in order to better understand</p>	<p>On April 4, 2006, a Notice of Filing was sent out to all interested parties, including the California Department of Fish and Game, notifying them of the public hearing on this issue and providing directions to all accompanying documents (including the TMDL staff report, Resolution, and Basin Plan Amendment) on the Regional Board’s website.</p>

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6.2	Department of Fish and Game	5/19/06	<p>and respond to these proposed requirements.</p> <p>We understand that the City of Los Angeles has been pursuing an Integrated Resources Plan (IRP) and has initiated a Stakeholder-led process called Cleaner Rivers through Effective Stakeholders TMDLs (CREST) to support TMDL development and supporting studies. The CREST stakeholder process for this TMDL concentrated only on developing the selection of the TMDL related to viable implementation alternatives and strategies. The implementation alternatives and strategies do not appear to address potential management measures applicable to the Ballona Wetlands. The other TMDL sections were already developed by the RWQCB and EPA, and were not open to analysis and revision through the stakeholder process, including the input of the department. We are concerned that no effort has been made to inform the Department of this process as it may relate to the Ballona Wetlands. In addition, we have been unable to reach RWQCB staff this week via telephone to assist with our questions and responses regarding this TMDL.</p>	<p>The implementation alternatives and strategies discussed in the staff report do not preclude any appropriate potential management measures applicable to the Ballona Wetlands. The Porter Cologne Water Quality Control Act prohibits the Regional Board from prescribing the method of achieving compliance with water quality standards, and likewise TMDLs. The staff report presented some potential implementation strategies; however, there is no requirement to follow the particular strategies proposed.</p> <p>Stakeholder input was solicited early in the TMDL development process during CEQA scoping June 12 2003. Notice of this meeting was sent to the California Department of Fish and Game.</p> <p>Regional Board staff spoke with Brian Henderson of the Department of Fish and Game on May 18, 2006.</p>
6.3	Department of Fish and Game	5/19/06	<p>To our knowledge, this is the first bacterial TMDL that has been proposed for Department Lands within our region. As with many State agencies, including the RWQCB, our budget resources are extremely limited. Unfortunately, the Ballona Wetlands Ecological Reserve does not have a site-specific operating budget or an endowment for management</p>	<p>We recognize the significant challenges which face the Department of Fish and Game. We encourage the Department to work closely with other responsible parties/stakeholders to find the appropriate solutions and shoulder the monitoring and research responsibilities. The Regional Board remains committed to working with the Department of Fish and Game and other stakeholders during the implementation phase of this</p>

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			<p>or maintenance, and we do not have funding for Department staff to manage the property. Funding for the Ballona Wetlands Restoration Plan, discussed below, is being provided by the California Coastal Conservancy (SCC) and is earmarked for restoration planning, however it is not available to the Department for management or maintenance. These limitations make it very challenging for the Department to address existing needs, let alone additional monitoring and research burdens. We are very concerned that implementation of the proposed Ballona Wetlands bacterial TMDL will adversely impact the Department's ability to preserve other lands and otherwise fulfill our mission of managing fish, wildlife, and plant resources in the Ballona Wetlands and other sites throughout the Region. We request RWQCB assistance to identify ways to ensure that the basic management needs of the Ballona Wetlands Ecological Reserve and other Department lands are not adversely impacted by the requirements adopted under this proposal.</p>	<p>TMDL.</p>
6.4	Department of Fish and Game	5/19/06	<p>The Department has been identified as a "Responsible Jurisdiction" with regard to load allocations (LAs) for the Ballona Wetlands that are to be met at the tide gate(s) connecting it to Ballona Creek. The Ballona Wetlands Ecological Reserve includes nearly 600 acres in four distinct Areas (Area A, Area B, Area C, and the adjacent reach of Ballona Creek channel)(Figure 1) Of a previously extensive tidal wetlands system, today only a small</p>	<p>The TMDL addresses Ballona Creek and the sources and potential sources of indicator bacteria to the Creek.</p> <p>There is no requirement to manage bacterial levels in the wetlands themselves only to monitor the contribution and, if necessary and appropriate, attend to the contribution of the wetlands to Ballona Creek.</p> <p>An appropriately designed monitoring program can help</p>

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			<p>number of tidal channels in Area B are connected to the tide gates referenced in the TMDL, totaling approximately 5.8 acres (Figures 2 and 3). Areas A and C have a single estuarine channel, the “Marina Ditch”, which is connected to Marina del Rey. Please provide clarification regarding which portions of the Wetlands would be potentially subject to these requirements. Presuming that Area B is the area that the RWQCB would regulate under this proposal, does this include the entire 338 acre-parcel? Besides estuarine wetlands, would it include palustrine wetlands, ground-influenced wetlands, or uplands that are not hydrologically connected to Ballona Creek?</p>	<p>establish what areas of the wetlands actually are contributing indicator bacteria to the Ballona Creek and at what levels.</p> <p>Management strategies, BMPs would only be called for to address exceeding levels of bacteria entering the Creek.</p>
6.5	Department of Fish and Game	5/19/06	<p>The TMDL documents refer to the Ballona Wetlands as “non-point sources of bacterial contamination”. However, the documents provide no supporting data. The characterization of the Area B tidal marsh as source of fecal indicator bacteria (FIB) contamination should have identified a net influx of bacteria discharged from the Area B tidal marsh into lower Ballona Creek. How did the RWQCB make this determination given that water flowing into the wetlands during high tides is already known to be contaminated?</p>	See Response to 2.15
6.6	Department of Fish and Game	5/19/06	<p>We are unaware of any recent studies of our property linking the tidal marsh with FIB loading. Water quality data from within the existing tidal marsh in Area B are limited. The City of Los Angeles, Department of Public Works, Bureau of</p>	See Response to 2.15

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			<p>Sanitation collects field measurements of general water quality parameters that include salinity, dissolved oxygen, temperature, pH, and turbidity. Loyola Marymount University is also conducting water quality measurements in the Area B tidal marsh for salinity and bacteria. Although the existing tidal marsh areas are subject to tidal flows from Ballona Creek, these inflows have been restricted. Furthermore, the tidal marsh is not subject to the total flows and loadings from the Ballona Creek watershed, but has restricted input from the tidal section and storm water from drainage areas surrounding the marsh. We are concerned about the poor water quality of Ballona Creek and its effects on the Area B tidal marsh. Existing sampling data provide for comparison of general water chemistry, but not on potential impacts to Area B from in-flows from Ballona Creek or urban runoff. The Department requests clarification on what information the RWQCB used to determine FIB loading on the Reserve. We also request copies of this information for our review.</p>	
6.7	Department of Fish and Game	5/19/06	<p>The Department has consulted with the City of Los Angeles, Bureau of Sanitation Environmental Monitoring Division and Dr. John Dorsey of Loyola Marymount University, both involved with environmental monitoring of the wetlands. According to the information available to the Department, including a paper (in press, to be published by the Southern California Academy of</p>	See Response to 2.15

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			<p>Sciences) regarding FIB in Area B of the Ballona Wetlands (Dorsey 2006, Attachment 1), there are no existing data to support the RWQCB's assumption. In fact, preliminary results, though not yet conclusive, suggest that the Area B tidal marsh may reduce bacterial loads entering the wetlands through the tide gates by acting as a "sink". It is acknowledged that under different tidal cycles in different reaches of the channels, FIB concentrations may also result in re-suspension of sediments, adding to FIB concentrations. Nevertheless, the RWQCB should consider supporting data prior to determining that the Ballona Wetlands is contributing to FIB loads. In the meantime, we submit Dr. Dorsey's paper (Attachment 1) into the record for your consideration.</p>	
6.8	Department of Fish and Game	5/19/06	<p>Ballona Creek is likely a major source of FIB contamination of the Area B tidal marsh. The construction of Ballona Creek levees in the 1930's isolated the existing Ballona Wetlands system from the regular tidal influence of the Santa Monica Bay. Until 2003, two sets of flap-gated culverts were located within the south levee of Ballona Creek, Their failure to close completely allowed some tidal exchange with the wetlands. The eastern flap-gates have been replaced with self-regulating tide gates (SRT) installed as part of the Corps of Engineers/City of Los Angeles 1135 Habitat Restoration project, allowing control over the tidal inundation and corresponding habitat functions. The</p>	See Response to 2.15

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			<p>City of Los Angeles was the local sponsor of the Corps' 1135 project, and retains control of the adjustable SRT's. Playa Vista Capital, the former owners of the property, granted a Permanent Ecosystem Restoration Easement (Attachment 2) in favor of the City to fully implement the 1135 project, and increase the inundation by adjustment of the SRT's. The City plans to carry out the next phase of the 1135 project in September 2006, which would adjust the SRT's to allow for more tidal inundation. The replacement of the flap gate with the SRT has allowed for greater tidal exchange. The frequency of inundation has also increased as the tidal inundation occurs daily to a fixed elevation. Currently, the SRT is set to close at 1.1 meters mean lower low water (MLLW), inundating approximately 7.7 acres over the area currently subject to tidal inundation (approximately 5.8 acres). This action has the potential to alter existing interactions between the wetlands and FIB entering the wetlands from Ballona Creek. Is it possible that a TMDL implementation measure could involve future adjustment of the tide gates? If so, would the City or the Department be responsible? Because the Department took title to Area B after approval of this project, we may not have the ability to modify the project to address the potential of increased FIB.</p>	
6.9	Department of Fish and Game	5/19/06	Several other sources of potentially FIB-contaminated runoff enter Area B. A preliminary description of the physical characteristics of Area B	See Response to 2.15

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			<p>(PWA, 2006) is provided as Attachment 3. The sources of water to Area B include direct precipitation, tidal flow through the two gates along Ballona Creek levee, possible runoff from the Gas Company facility and road network at the base of the del Rey Bluffs, urban runoff from roads, urban runoff from the commercial district of Playa del Rey in the City of Los Angeles (Figures 3-5), and runoff from the del Rey Bluffs. Freshwater input to Centinela Ditch and Jefferson Drain was rerouted into the Playa Vista Freshwater Marsh (SLC Lands) following its construction. We request clarification regarding jurisdiction responsibility for these potential contamination sources. The Department believes we are not responsible for FIB's originating outside of our property.</p>	
6.10	Department of Fish and Game	5/19/06	<p>The Department requests clarification from the RWQCB on how we would demonstrate that bacterial contamination from the wetlands is non-human generated through the required source identification study. The wetlands are in a more or less natural, vegetated state, and are closed to the general public. There are no structures or other development in the wetlands. We are therefore unsure of the benefit of conducting this type to survey. For example, what would be the sources of "unnatural" human generated FIB's if present within the wetlands besides potential sources already discussed (Ballona Creek, urban runoff, etc.)? If this study would go beyond identifying runoff sources</p>	<p>See Response to 2.15 A natural source identification study would only be required if a responsible jurisdiction chose to pursue the natural sources exclusion approach as opposed to the reference system approach to implementing the bacteria objectives.</p> <p>In such a case, Regional Board staff will work directly with the entity to develop a work plan appropriate for the reach in question.</p>

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			<p>and patterns along with existing management of the Ecological Reserve, how can DFG obtain funding sources for this task? How do other land management agencies with very limited staff and funding accomplish this? In addition, it is our understanding that during the CREST process, stakeholders discussed and debated the implementation of distributed watershed wide strategies and monitoring and data relevant to where these implementation strategies, as well as monitoring, would be needed. The Ballona Wetlands were apparently not discussed, and the Department was never notified. We request that the source identification study requirement be waived and the RWQCB issues a natural source exclusion for the Ballona Wetlands. The Ballona Wetlands is an Ecological Reserve and would not be expected to support land uses contributing human-generated FIB's to Ballona Creek now or in the future.</p>	
6.11	Department of Fish and Game	5/19/06	<p>Until issued a natural sources exclusion provision, both non-point sources – Del Rey Lagoon (City of Los Angeles is responsible Jurisdiction) and Ballona Wetlands – will be assigned load allocations subject to the same schedule with waste load allocations. Since the Department manages a natural area at the bottom of the system, this does not appear to make the best use of our limited personnel and fiscal resources. We request eliminating this requirement of deferring load-related compliance activities until after completion of the source identification study, if</p>	<p>The TMDL is required to identify sources of impairment and assign waste load allocations and/or load allocations as necessary. However, preliminary data indicates that rather than being a source, the Ballona Wetlands act as a sink for bacteria loading from Ballona Creek . Therefore the TMDL will be revised to remove the Ballona wetlands as a source of bacteria loading to the creek.</p>

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6.12	Department of Fish and Game	5/19/06	<p>a case can be made that such a study is necessary.</p> <p>The Department is working with the California Coastal Conservancy (SCC) on a comprehensive restoration plan for the Ballona Wetlands. This project will develop restoration alternatives for all of the state-owned properties, including Department and State Lands Commission (SLC) holdings. The restoration planning process will develop and analyze a range of alternatives to implement several complimentary ecological, habitat, and public access goals. We anticipate that the restoration project will be carefully phased in order to accommodate existing species and habitats, complex hydrologic and hydraulic considerations, existing infrastructure, and other issues including FIB and the proposed TMDL. It is also very likely that the project may change existing connections between the Ballona wetlands, Ballona Creek and Marina Del Rey. Given the scale of the transformation being planned for this site, it does not make sense to conduct a source identification study at this time or in advance of the implementation of the enhancement. We believe that the restoration planning process is the most appropriate means of determining the existing and future function of Area B in relation to FIB issues. It is highly likely that implementation of the chosen restoration alternative could address FIB issues through wetland design and Best Management Practices, including diversion of potentially contaminated runoff away from the wetlands. The</p>	See response to 6.11

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			Department believes that issues relevant to implementation of this TMDL in a restored costal wetland with improved tidal flushing would be best addressed during design and implementation of the Ballona Wetlands Restoration Project.	
6.13	Department of Fish and Game	5/19/06	Loyola Marymount University has proposed a FIB Mass Balance Study for Area B. This study would acquire mass balance of FIB by determining densities in a section of the wetland tidal channels, predicting the volume of water in that section based on hydraulic/hydrodynamic modeling currently being developed by PWA for the Restoration Plan. Estimates of bacterial mass will then be calculated for the section, and bacterial masses changes (if any) will be measured between ebb and flow tides at sites throughout the Area B tidal wetlands. FIB densities will be measured at five stations in the wetlands, each station corresponding to a section for modeling. This study is beginning in a few days, and the Department will share the results with the RWQCB.	See response to 6.7
7.1	Heal the Bay	5/19/06	The Draft TMDL should be revised to include the evaluation criteria the RWQCB will use to determine whether longer implementation schedules are warranted if an integrated water resources approach (IWRA) is utilized. Additionally, the maximum timeframe that will be allotted to implement an IWRA should be explicitly stated in the TMDL and should be consistent with the Santa Monica Bay Beaches (SMBBB) TMDL schedule.	The Basin Plan Amendment will be revised to include the “evaluation criteria” that the RWQCB will use to determine whether longer implementation schedules are warranted if an integrated water resources approach (IWRA) is utilized. The maximum compliance timeframe is explicitly stated in the Basin Plan Amendment “Significant Dates Table” as 14 years from the effective date of the TMDL. However, for the purpose of clarity, it will be revised to state that the final compliance date will be July 15, 2021 which coincides with the final compliance date of the Santa Monica Bay Beaches TMDL.

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7.2	Heal the Bay	5/19/06	The timeframe between TMDL adoption and commencement of monitoring should be shortened to six months.	Regional Board staff assigned the timeframe in response to stakeholder concerns that sufficient time be allowed for inter-agency coordination.
7.3	Heal the Bay	5/19/06	The natural source special studies for Del Rey Lagoon and Ballona Wetlands should not be required or included within the TMDL. In addition, the focus of these studies should be redirected to include identifying and abating all anthropogenic sources of bacteria into these water bodies - the primary requirement of the natural sources exclusion provision of the Basin Plan.	A natural source identification study would only be required if responsible jurisdictions choose to pursue the natural sources exclusion approach as opposed to the reference system approach to implementing the bacteria objectives.
7.4	Heal the Bay	5/19/06	The allowable exceedances for winter dry weather for Centinela Creek, Ballona Wetlands, and Del Rey Lagoon appear to be incorrectly stated in the Draft TMDL. For all three water bodies, the single sample objectives for winter dry weather should be three allowable exceedance days.	For all three water bodies, the single sample objectives for winter dry weather is three allowable exceedance days. The TMDL will be revised to correct these errors.
7.5	Heal the Bay	5/19/06	The implementation discussion for dry weather should be revised to reflect the dry weather discharge prohibition of the MS4 permit.	The Regional Board is in the process of amending the LA County MS4 Permit to incorporate requirements of the SMBBB Dry Weather Bacteria TMDL. Once the Ballona Creek Bacteria TMDL is in effect, similar amendments to the LA County MS4 Permit will be made to incorporate the provisions of this TMDL.
7.6	Heal the Bay	5/19/06	Please provide a citation and further explanation of the acceptable health risk that forms the basis for the REC-2 standard which applies to Reach 1 of Ballona	This statement regarding the basis of the REC-2 standards was made in error. Staff intended to say that the 10% exceedance rate for the REC-2 objective was based on an acceptable

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			<p>Creek.</p> <p>The staff report states that the REC-2 standard in the Basin Plan is based on acceptable health risk. Please provide a citation and explanation of the REC-2 standard and how it relates to acceptable risk in the staff report. This is important to the TMDL due to the manner in which the high flow suspension provision is applied. In Reach 1, which is designated REC-2, the days of high flow are <i>added</i> to the allowable exceedances of 10% (the number of allowable exceedances rate provide in the REC-2 standard). By contrast, for Reach 2, which is designated REC-1, the maximum allowable exceedance days is based on the reference location <i>or</i> the high flow suspension, whichever is greater. According to the staff report, the logic for this difference is that the REC-2 standard "is based on an acceptable level of health risk," while the reference location approach is designed to account for natural sources, which exist regardless of flow. (Staff Report at 29.)</p> <p>Minor Comments</p> <p>Analyses of historical data for exceedance rates in the staff report did not include exceedances of the total:fecal ratio standard. Thus, the reported exceedance rates may be lower than actual exceedances.</p>	<p>exceedance rate as identified by US EPA in its 305(b) guidance. The high flow suspension is applied differently in Reaches 1 and 2 because the reference system approach does not apply in Reach 1, since Reach 1 does not carry a REC-1 beneficial use designation. The reference system approach is only applicable to waters designated as REC-1.</p> <p>Comment duly noted. Staff acknowledges that analyses of historical data for exceedance rates in the staff report did not include exceedances of the total:fecal ratio standard. However, analyses of shoreline monitoring data have shown that other bacteria indicators exceed more frequently than this ratio.</p>

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			<p>The geometric mean, instead of the arithmetic mean, should be used to report the central tendency of the historical bacteria monitoring data in the summary tables of the staff report. The arithmetic means are higher than the actual central tendencies of the bacteria data because bacteria density distributions are highly skewed</p> <p>Page 25 of the staff report incorrectly states that allowable exceedance days are set for an annual basis, in addition to the three time periods of summer, winter dry and winter wet. Annual exceedance day allowances are not set in the TMDL.</p> <p>Page 8 of the staff report incorrectly reports the California Ocean Plan standards for bacteria. (The plan was amended to be consistent with the State's bacteriological health standards for open-ocean recreational contact)</p> <p>Ambient monitoring requirements are discussed in the staff report but are not specified in the Basin Plan Amendment. Ambient monitoring is necessary in this TMDL in order to effectively track progress towards achieving WLAs, refine source identification information and understand the frequency of exceedances of the single sample limits during wet weather. Thus, ambient monitoring requirements should be included in the Basin Plan Amendment. Also, what is the basis for assuming</p>	<p>The available data does not lend itself to geomean analysis. However, the TMDL will be revised to report median values as opposed to the arithmetic mean</p> <p>The annual allowable exceedance days for the applicable reaches of Ballona Creek is 20. However these exceedance days are allocated by season. The TMDL will be revised to remove this statement in the interest of clarity.</p> <p>The TMDL will be revised, in the summary of water quality standards, to report the most up-to-date standards set forth in the California Ocean Plan.</p> <p>See response to 2.9 The current monitoring program conducted by the City and County includes sites in each reach of the creek and estuary and at all confluences with their tributaries. This was the basis for assuming current monitoring efforts may be sufficient.</p>

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			that the current monitoring program conducted by the City and County of Los Angeles is sufficient?	

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8.1	Richards/ Watson/ Gershon, representing the City of Beverly Hills	5/19/06	<p>The Draft TMDL fails to comply with relevant provisions of the California Environmental Quality Act. The TMDL does not meet the requirements of Public Resources Code section 2180.5(d)(2) to qualify for exemption from CEQA requirements. Even if the exception applied, the Draft TMDL still fails to conduct the equivalent of the required analysis of the environmental impacts and effects. Cal. Code Regs. tit. 14 §§ 15250, 15252. The checklist does not provide sufficient analysis of the impacts or offer evidence of ways in which the impacts can be mitigated to a level of insignificance. Pub. Resources Code §§ 21064.5, 21080.5, 21080(c), Cal Code Regs. §§ 15063, 1520, 15252. Potential impacts include: water flow disruptions, soil displacement, an increase in noise and traffic levels, changes in absorption rates, drainage patterns, the amount of surface water runoff; service and facilities such as fire and police protection, schools, parks and other recreational facilities, maintenance of public facilities and roads, other governmental services, and utilities and service systems for water and storm water drainage. The failure of the Regional Board to undertake a proper study of these impacts and consider the feasibility of alternative impacts results in the Draft TMDL's invalidation. <i>City of Arcadia v. State Water Resources Control Board</i> (2006) 135 Cal. App. 4th 1392, 1426.</p>	...

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8.2	Richards/ Watson/ Gershon, representing the City of Beverly Hills	5/19/06	The Draft TMDL fails to consider bacteria, nutrient, and sediment contribution from facilities over which neither the City nor any of the other named dischargers have jurisdiction, such as school districts, water districts, state entities, and private landowners. The Regional Board could feasibly exercise regulatory jurisdiction over these facilities. As a matter of public policy, it is inequitable to place the entire burden of monitoring and mitigating these facilities solely on the alleged dischargers enumerated in the Draft TMDL.	If a source investigation shows a source outside the jurisdiction of the MS4 permit then the Regional Board will invoke other regulatory authority to control the discharge.
8.3	Richards/ Watson/ Gershon, representing the City of Beverly Hills	5/19/06	Compliance within the proposed time frame would be unrealistic. The draft TMDL imposes stringent time limits for the coordination, funding, submission, and realization of a TMDL Implementation Plan. Furthermore, the City is expected to undertake massive infrastructure projects to meet the stated goals for year six while the entire plan itself is subject to revision at year four. Given the size of the project, the number of agencies involved, and the lack of solid data underlying the TMDL goals, such a timeframe is highly unrealistic.	The compliance schedule is both necessary (see response to 2.1) and reasonable. The Regional Board expects that responsible agencies will be able to apply results and information obtained from on-going studies and iterative BMP applications from other Bacteria TMDL implementation efforts.

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8.4	Richards/ Watson/ Gershon, representing the City of Beverly Hills	5/19/06	By requiring compliance with the Draft TMDL, the Regional Board has imposed new programs and/or has required a higher level of service of existing programs that are not required or mandated under the Clean Water Act or any federal regulations thereunder. The imposition of unfunded programs and mandates in the Draft TMDL is inconsistent with the provisions of the California Constitution specifically Article XIII B, Section 6. The Draft TMDL contains numerous data collection requirements. Any information collection demands mandated by federal regulations must be submitted for approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act. 44 U.S.C. §§3501 et seq.	<p>The entire TMDL is compelled by federal law, and as such, is not an unfunded state mandate. First, the reductions in loading will be required as part of the NPDES permits. The State Board has previously found that the requirement to reimburse local agencies for state-mandated costs does not apply to NPDES permits. SWRCB Order No. WQ 90-3 (In the Matter of San Diego Unified Port District). Second, the requirement that states develop TMDLs for impaired waters is clearly set forth at 33 U.S.C. 1313(d)-(e). The proposal includes several years for the affected agencies to conduct planning and implementation activities, and to explore and select any necessary funding options, including loans, grants and revenue increases. Moreover, the TMDL implements applicable water quality standards and makes all dischargers responsible for meeting the water quality standard. As a result, the TMDL is generally applicable and not subject to subvention requirements in Article XIII.</p> <p>The Federal Paperwork Reduction applies only to federal agencies. The federal act has no application to data collection requirements issued by the Regional Board.</p>

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8.5	Richards/ Watson/ Gershon, representing the City of Beverly Hills	5/19/06	<p>The Draft TMDL does not undertake a cost/benefit analysis. Section 303(d) of the Clean Water Act does not obligate States to undertake costly and detailed mitigation of unimpaired waters such as Centinela Creek and Del Rey Lagoon. See 33 U. C. § 1313. For this authority, the Regional Board relies on Water Code section 13267. When the Regional Board relies on California state law, consideration of economic factors is appropriate. (<i>City of Burbank v. State Water Resources Control Board</i> (2005) 35 Cal. 4th 613 627-628.) The Regional Board has not properly analyzed the cost and economic impact of the Draft TMDL in the manner contemplated by the Clean Water Act and Water Code § 13241. The economic burden, including the costs of such reports, must bear a reasonable relationship to the need for the report and the benefits to be obtained there from. (Water Code §§ 13165, 13225(c), 13267(b)). Even if the Draft TMDL did not exceed of the requirements under the federal Clean Water Act, consideration of economic factors would still be appropriate. Section 1251(a)(2) of title 33 United States Code sets as a national goal “<i>wherever attainable</i>” an interim goal of water quality. Furthermore, section 1313(c)(2)(A) of title 33 United States Code requires consideration of “<i>use and value</i>” when revising or adopting a new standard.</p>	<p>The Regional Board is required to assign allocations to upstream reaches in order to meet TMDLs for downstream impaired reaches. TMDLs must include all sources of the impairment, including sources emanating from unimpaired tributaries. Ballona Creek Estuary, Reach 1, and Reach 2 are impaired by bacterial indicators. The Regional Board can therefore assign waste load allocations to all upstream reaches and tributaries, including Centinela Creek and Del Rey Lagoon in order to meet TMDLs in downstream impaired reaches. The TMDL is not adopted pursuant to Water Code section 13267, but subsequent orders may be. Those orders would require an analysis under Water Code section 13267 for entities discharging waste—such as municipal dischargers. At this time, it is not possible to evaluate the burdens of any such analysis, because the parameters of the program and reports have not been specified in a Water Code section 13267 order. Moreover, the responsible agencies will propose reporting requirements to the Regional Board. As such, the responsible agencies will have a role in determining the actual burden. In developing the 13267 order, the Executive Officer will consider costs in relation to the need for data. With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and bacteria loading.</p> <p>The Supreme Court’s decision in <i>City of Burbank v. SWRCB</i>, has no applicability to this TMDL. The Burbank decision relates to the issuance of permits that impose requirements beyond federal law. This TMDL is not a permit; it is a regulation. The permitting statute, Water Code section 13263, requires the Regional Board in setting waste discharge requirements, to consider the factors set forth in section 13241. A TMDL, conversely is not a permit, but a regulation directed to ensuring that subsequent permitting decisions implement existing standards. Under California law, TMDLs are established pursuant to Water Code section 13242. Section 13242 does not require a reconsideration of the 13241 factors.</p>

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8.6	Richards/ Watson/ Gershon, representing the City of Beverly Hills	5/19/06	<p>The scientific analysis outlined in the Draft TMDL fails to provide sufficient detail regarding the parameters for establishing a TMDL in the various segments of the Ballona Creek watershed, as required by 40 C.F.R. 130.7(c). The use of Leo Carillo beach as a reference point does not account the myriad of environmental factors that influence Ballona Creek. Additionally, the data supporting the Draft TMDL is built upon a shaky scientific foundation. In many cases (Table 4-4), the data that the Regional Board relied on for the purposes of establishing the TMDL is often based on extremely small sample sizes. By not subjecting the Draft TMDL to scientific peer review, the Regional Board fails to comply with Health and Safety Code section 57004. Health and Safety Code section 57004(d) provides in pertinent part:</p>	<p>The technical analysis is scientifically sound and supports the TMDL. The data assessment in the staff report clearly demonstrates evidence of impairment in Ballona Creek Reaches 1 and 2, Ballona Estuary, and Sepulveda Channel. In addition to assigning TMDLs for the impaired reaches, Waste Load Allocations and Load Allocations are assigned to the tributaries to these impaired reaches.</p> <p>The proposed TMDL will be reconsidered four years after the effective date to re-evaluate the selected reference watershed and consider other reference watersheds that may better represent reaches of Ballona Creek and Estuary.</p> <p>Extensive data was analyzed for the purposes of determining impairment and for assigning load and waste load allocations. The data in Table 4-4, which provide information on relative land use contributions of bacteria, are for the purposes of source assessment only and were not used in the development of TMDLs or allocations. Each municipality and permittee will be required to meet shared allocations at specified monitoring locations, not necessarily an allocation for their jurisdiction or for specific land uses.</p> <p>As a TMDL that will be incorporated into state water quality control policy, the proposed TMDL is subject to the scientific peer review provisions of Health and Safety Code section 57004. However, the “scientific portions” of the proposed TMDL have already undergone the scientific peer review required by the Health and Safety Code. The proposed TMDL contains a scientific approach to regulating bacteria that is drawn from the Santa Monica Bay Beaches Bacteria TMDL and existing bacterial water quality objectives, which were both previously peer reviewed. As a result, the Regional Board has fulfilled the requirements of Health and Safety Code section 57004, and the proposed TMDL does not require further peer review.</p>

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8.7	Richards/ Watson/ Gershon, representing the City of Beverly Hills	5/19/06	The Draft TMDL does not comply with the Administrative Procedures Act (Cal. Gov. Code § 11340, et seq.) including, but not limited to, making a showing of "necessity," "authority," "clarity," "consistency," "reference and "non-duplication." See Gov. Code § 11349.1(a).	The commentor does not specify in what manner the Draft TMDL fails to comply with the Administrative Procedures Act. For purposes of state law, the authority and reference for the TMDL is expressly spelled out in the draft resolution. The TMDL is a program of implementation for an existing water quality objective and is necessary under Water Code section 13242. Moreover, as detailed at length in the TMDL document, Basin Plan amendment, and response to comments, the TMDL is necessary to comply with section 303(d)(1)(C) of the Clean Water Act. The need and reference for it to be a Basin Plan amendment is provided not only by Water Code section 13242, but also by 40 CFR 130.6(c)(1) (requiring incorporation into the state's water quality management plan, of which the Basin Plan is the only portion within the responsibility of the Los Angeles Regional Board).
9.1	Playa Vista	5/19/06	The Freshwater Marsh is a BMP that is part of a larger Freshwater Wetland system that provides stormwater management and water quality improvements to the Playa Vista development and a large offsite tributary area. In 2004 Playa conveyed the Freshwater Marsh to the State Lands Commission (SLC) but expressly reserved certain rights and responsibilities with respect to the construction, maintenance and operation of the marsh. The property to the west of the Freshwater Marsh, which is known as Ballona Wetlands is owned and operated by the SLC and the State Department of Fish and Game, Wildlife Conservation Board. In the past, the Regional Board	The TMDL will be revised to make the distinction between the Freshwater Marsh and the Ballona Wetlands.

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			has recognized the Freshwater Marsh is separate and distinct from the Ballona Wetlands. In contrast, as currently written, the proposed TMDLs do not define the "Ballona Wetlands." Playa believes this distinction should be recognized by the proposed TMDLs and any related amendment to the plan.	
9.2	Playa Vista	5/19/06	Playa is concerned that the proposed TMDLs appear to discourage the implementation of natural treatment system BMPs such as the Freshwater Marsh. Accordingly, Playa encourages the Board to defer adopting the proposed TMDLs until such a time as the Board can reassure the public that the TMDLs have been developed in such a way as to support and encourage implementation of natural treatment systems like the Freshwater Marsh in lieu of hard construction.	The Regional Board is supportive of implementing natural treatment system BMPs such as the Freshwater Marsh. The Marsh is included in the TMDL only as a potential source of bacteria loading to Ballona Estuary. Acknowledging the Marsh as a potential source is not a reflection on the its treatment abilities.
9.3	Playa Vista	5/19/06	Playa fully supports and concurs with comments submitted by Latham and Watkins, LLP and GeoSynthec Consultants and incorporates them by reference.	Comment duly noted.

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10.1	Latham and Watkins	5/19/06	The systemic non-compliance with the receiving water quality objectives (from both in-stream and drain samples) presented in the TMDL Report and discussed further in the GeoSyntec Letter demonstrates that the water quality standards are not reasonably achievable, violating California Water Code section 13241. Even if bacteria levels are substantially reduced through controls placed on external loads from point sources, regrowth of bacteria within the stream channel can return the waterbody to a state of non-attainment. The TMDL process must be suspended to allow the Agency to re-evaluate the bacteria standards to account for in-stream, internal bacteria loading, in accordance with Federal guidance and SWRCB policy.	The proposed TMDL does not establish or alter water quality objectives. Therefore, the analysis set forth in §13241 is not required here. Nonetheless, the TMDL is specifically designed to reasonably achieve water quality objectives. The reference system/antidegradation approach allows a reasonable amount of exceedances of the single sample bacteria objective for wet weather and winter dry weather.

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10.2	Latham and Watkins	5/19/06	<p>The linkage analysis included in the TMDL Report does not address the requisite linkage between the water quality exceedances and the pollutant sources, including internal loads. Where it is acknowledged that Ballona Creek and Ballona Estuary are frequently out of compliance due to internal loading, reliance on the reference system approach through the linkage analysis is inappropriate. In these types of situations, the approach directed by the SWRCB is to correct the standard, not to establish improper limitations in a TMDL.</p> <p>Aside from the lack of detail included in the linkage analysis, the “critical conditions” portion of the analysis is lacking, as it indicates that wet weather days are the critical condition for purposes of the proposed TMDL; however, the TMDL Report appears to address exceedances based upon dry-weather load-specific data.</p>	<p>The TMDL does not state that Ballona Creek and Ballona Estuary are frequently out of compliance due to internal loading. However, potentially contributions to internal loading of bacteria, by birds and wildlife that inhabit the estuary, can be accounted for under the reference system approach or alternatively the natural sources exclusion approach.</p> <p>While the frequency of exceedance is greatest during wet-weather, causing it to be identified as the critical condition, the TMDL must be set to achieve water quality standards during both wet and dry weather.</p>

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10.3	Latham and Watkins	5/19/06	<p><i>The concentration-based numeric targets do not appropriately relate to the beneficial uses to be protected. While federal TMDL regulations make it clear that a different measure other than mass may be used for bacteria, the measure selected must be “appropriate.” 20 40 C.F.R. §§ 122.45(f), 130.2(i). A concentration-based bacteria sample is representative only of the concentration in the particular sampling location—not necessarily the levels of bacteria for a particular reach of a waterbody or waters to which a recreating individual would be exposed - and are not “appropriate”. The proposed TMDL should be revised to include mass-based targets. By setting the numeric targets equal to concentration-based water quality standards, it could also be said that the proposed TMDL fails to appropriately account for the assimilative capacity of the waterbody, as is required by Cal. Water Code § 13241.</i></p>	<p>Federal regulations dictate that TMDLs may be expressed as mass per time, toxicity, or any other appropriate measure. (40 CFR 130.2(i).) The numeric targets are the Basin Plan bacteria objectives which protect the REC-1, LREC-1, and REC-2 beneficial uses, and are, therefore, appropriate measures to use for bacteria.. In previous bacteria TMDLs adopted in the Los Angeles Region, US EPA Region IX has agreed that the concentration-based target and allowable exceedance days are considered an ‘appropriate measure’ consistent with the definition in 40 CFR 130.2(i).</p> <p>Because the proposed TMDL does not establish or alter water quality objectives, §13241 does apply.</p>

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10.4	Latham and Watkins	5/19/06	The methods by which the Agency proposes to implement the TMDL do not sufficiently address the substantial internal bacteria loading that exists in Ballona Creek and Ballona Estuary. Both the primary and the alternate Implementation Plans focus nearly exclusively on removal of bacteria indicators from sources external to the water bodies. Only in the preferred Implementation Plan strategy are “in-stream” solutions discussed. Without sufficient Best Management Practices (“BMPs”) tied to addressing the substantial internal load within Ballona Creek and Ballona Estuary, the Implementation Plan will fail to achieve its goals.	The Regional Board is prohibited from prescribing the method of achieving compliance with water quality standards, and likewise TMDLs. The draft TMDL staff report presents some potential implementation strategies; however, there is no requirement to follow the particular strategies proposed as long as the maximum allowable exceedance days for each time period are not exceeded. The implementation strategies presented are the result of a stakeholder effort facilitated by CREST through which responsible agencies worked together to compile potential implementation scenarios and to provide cost estimates on the selected implementation options.
10.5	Latham and Watkins	5/19/06	The Implementation Plan does not appear to analyze the ability of the Plan to achieve compliance with the water quality standards. With regard to dry weather conditions, the Implementation Plan appears to rely upon the complete removal of flow from the Creek. With regard to the proposed BMPs in the Plan targeted at bacteria sources generally, or targeted at wet weather removal, the TMDL Report gives little to no information as to their efficiency. Proper analysis with the corresponding data must be provided to demonstrate that, if the TMDL is implemented, it will achieve the desired results in a specific amount of time.	See response to comment No. 4.4.

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10.6	Latham and Watkins	5/19/06	<p>The Agency should consider other BMP alternatives in addition to those presently contained in the Implementation Plan, in order to satisfy the Agency’s obligations pursuant to state law. Cal. Pub. Res. Code §21159 (requiring that sufficient alternatives to the proposed project be discussed); Cal. Water Code §13242 (requiring the Agency to describe actions necessary to achieve water quality objectives in its implementation plans). <i>See also City of Arcadia v. State Water Res. Control Bd.</i> 135 Cal.App.4th 1392, 1422 (Jan. 26, 2006). Because it has not been shown that the current BMPs in the Implementation Plan would, in fact, achieve the TMDL’s goals, additional BMP consideration (and alternatives analysis under CEQA) is warranted. Because certain BMPs contained in the Implementation Plan are acknowledged to have potentially adverse environmental effects, alternative BMPs, which could achieve the TMDL’s goals without causing adverse impacts, should be considered.</p>	<p>See response 10.4.</p> <p>The BPA, together with the staff report and backup materials, are a substitute document for an EIR or negative declaration and initial study. Included in these backup materials is the agenda item summary prepared prior to the Board’s consideration of the proposed BPA. The item summary will discuss alternatives to the proposed action, including a “no action” alternative. It is important to recall that there is no discretion in establishing WLAs derived from existing bacteria objectives. The discretion, for which appropriate alternatives are considered, is contained within the program of implementation.</p>

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10.7	Latham and Watkins	5/19/06	Based upon the implementation plan, the Agency cannot provide reasonable assurances that the water quality standards will be attained, Exceedances of the water quality standards will persist despite the TMDL, in light of the internal loads within the Creek and Estuary themselves. Additional analysis considering all the internal and external sources to Ballona Creek and Ballona Estuary, consideration of additional BMPs as components of the proposed Implementation Plan, and assessment of the efficiency of the proposed BMPs should be included within the TMDL before it is adopted.	Section 303(d)(1)(C) and USEPA policy require as an absolute minimum that the TMDL and its load allocations meet standards. There EPA guidance acknowledges flexibility in considering different allocation schemes to achieve the TMDL, and technical feasibility among different sources may be taken into account in choosing among different allocation schemes. In the proposed TMDL, by directly applying the numeric water quality standards and implementation procedures as waste load allocations, there is reasonable assurance that TMDLs will result in attainment of water quality standards. Again, although the draft TMDL staff report presents some potential implementation strategies, there is no requirement to follow the particular strategies proposed as long as the maximum allowable exceedance days for each time period are not exceeded.
10.8	Latham and Watkins	5/19/06	The TMDL relies upon scientific information and data which are not representative and do not reasonably relate to the situation being regulated. See <i>People v. Kelly</i> (17 Cal. 3d 24 (1976)). The use of a surf zone reference station does not appropriately represent conditions in the freshwater and brackish waters of the Ballona Creek and Ballona Estuary. The reliance in the linkage analysis on modeling conducted for the Santa Monica Bay bacteria TMDL is also inappropriate. Because the TMDL relies upon faulty scientific evidence, any Agency decision approving the TMDL would be arbitrary and capricious (California Code of Civil Procedure section 1085). See also, <i>City of Arcadia, supra</i> note 29, at 1409.	The modeling conducted for the Santa Monica Bay bacteria TMDL was not used in the development of allocations for that TMDL or the proposed Ballona Bacteria TMDL. The allowable number of exceedance days is based on empirical evidence obtained for the reference watershed. The proposed TMDL will be reconsidered four years after the effective date to re-evaluate the selected reference watershed and consider other reference watersheds that may better represent reaches of Ballona Creek and Estuary.

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10.9	Latham and Watkins	5/19/06	<p>The TMDL does not contain findings supported by substantial evidence, and Agency action adopting the TMDL would violate California Code of Civil Procedure section 1094.5. Although California Code of Civil Procedure section 1085 applies to the adoption of the Basin Plan amendment incorporating a TMDL, the approval of the TMDL itself is a distinct act required under the Clean Water Act and that precedes the preparation of the Basin Plan Amendment. Statements such as, “By directly applying the numeric water quality standards and implementation procedures as Waste Load Allocations, there is little uncertainty about whether meeting the TMDLs will result in meeting the water quality standards” are unsupported by any relevant evidence. As discussed previously, the TMDL does not provide reasonable assurances that water quality standards will be met, due to the failure to account for internal loads or include mass-based targets, the illusory nature of the implementation plan, and the inappropriateness of the scientific evidence.</p>	<p>The TMDL is adopted as an amendment to the Basin Plan, which is a quasi-legislative action of the Regional Board, subject review only under section 1085 of the Code of Civil Procedure. The TMDL adoption is not a separate act from the basin plan amendment. The requirements of Code of Civil Procedure section 1094.5 do not apply.</p> <p>The Waste Load Allocations are equivalent to the bacteria standards as implemented using the reference system approach.</p> <p>Also see response to 10.7</p>

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10.10	Latham and Watkins	5/19/06	<p>The CEQA Checklist Document fails to meet the requirements for the functional equivalent of a first tier environmental impact report or a negative declaration, and thus violates both CEQA and California Public Resources Code section 21159. In multiple instances, the CEQA Checklist Document fails to discuss mitigation for acknowledged adverse impacts required by Cal. Pub. Res. Code §§ 21061, 21159; 14 Cal. Code Regs. § 15121. For example, with regard to the BMPs proposed as part of the Implementation Plan that target near to complete removal of dry weather flow from the Ballona Creek system, the Agency acknowledges that the BMPs may have an adverse impact on plant and animal life in the downstream estuary. However, the CEQA Checklist Document fails to follow through on this analysis, deferring instead to others to “consult with the appropriate agencies to determine measures to reduce or remove impacts to plant [or animal] life.” The statement that certain projects would require separate CEQA review to address project-specific environmental impacts amounts to “project splitting”, which is specifically disallowed under CEQA. CEQA Guidelines § 15165; <i>see also Bozung v. Local Agency Formation Comm.</i>, 13 Cal. 3d 263 (1975) The CEQA Checklist Document fails to indicate that the proper analysis of alternatives was completed including a “no project” alternative. The CEQA Checklist Document fails to meet the requirements of CEQA and Public Resources Code section 21159 in the same way that the court found the documents for the Trash TMDL deficient.</p>	<p>The CEQA checklist, Staff Report and the Response to Comments comprise the functionally equivalent documents. Additionally, see response 3.12.</p>

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10.11	Latham and Watkins	5/19/06	<p>Although the Agency has claimed it is not establishing new enforceable limits in the proposed TMDL, it is, in fact, doing so. For example, a 1994 SWRCB Memo stated that numeric targets in TMDLs are “analogous to establishing water quality objectives” and “fall into the category of performance standards.” The TMDL limits, if adopted, are likely to be incorporated wholesale in the water quality permits for the regulated community within the watershed, making the limits directly enforceable. Additionally, waste load allocations are considered to be water-quality based effluent limitations, and are thus, in and of themselves, enforceable. 40 C.F.R. § 130.2(h). Because the TMDL limits, if adopted, will become enforceable objectives, California water law principles regarding reasonableness of regulation apply to the TMDL. Enforcement of the proposed TMDL limits is not reasonable, because meeting the limits will be an exercise in futility, as discussed above. A regulatory program of this nature is not “reasonable, considering all demands being made and to be made on [receiving] waters.” Cal. Water Code. § 13000</p>	<p>Because the TMDL is required under federal law, and is necessary to implement water quality objectives approved by USEPA, there can be no serious argument that the TMDL establishes an objective.</p> <p>Regional Board staff believe it is not only reasonable, but necessary to carry out the express requirements of Congress to establish TMDLs at a level that implement existing water quality standards (33 U.S.C. 1313(d)(1)(C)). Further, the proposed TMDL allows some latitude for compliance with numeric targets through the reference system/antidegradation approach, which allows a certain number of exceedance days of the single sample bacteria objective for wet weather and winter dry weather. These are reasonable actions. Finally, Water Code section 13000 establishes broad policies for the state. Implementing the Federal Clean Water Act is consistent with that policy and required. To the extent there is any objective reasonableness requirement in Water Code section 13000, the TMDL is reasonable. However, it is important to recall that this general statement, which appears amongst loft goals such as “waters of the state shall be protected for use and enjoyment by the people of the state,” must give way to specific requirements. In this case, the specific requirement is spelled out in superior federal law, which requires that the TMDL implement water quality standards.</p>

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10.12	Latham and Watkins	5/19/06	TMDLs are total maximum <i>daily</i> loads, not seasonal or annual loads. The D.C. Circuit recently confirmed this interpretation in <i>Friends of the Earth v. U.S. EPA</i> , noting that the use of TMDLs to regulate anything outside of a daily level exceeds the authority given to the EPA by Congress. Yet the proposed TMDL seeks to regulate bacterial indicators on a seasonal (e.g., summer or winter), and not daily, basis, and therefore exceeds its authority under the law.	Although there are different numeric targets and waste load allocations for different seasonal time periods, the waste load allocations are expressed as allowable exceedance days. The <i>Friends of the Earth</i> case is not a final decision, and the approach taken in this TMDL is consistent with existing legal authorities and California and US EPA practice.
10.13	Latham and Watkins	5/19/06	The State Office of Management and Budget requires peer review for all scientific and technical studies, reports, and other data that form the basis for important policy judgments made in the context of Agency regulations. U.S. EPA and SWRCB guidance also recommend external scientific review in the context of TMDLs. There is, however, no evidence in the Agency's TMDL Report that any scientific peer review was performed on the proposed TMDL or its supporting documents.	The scientific portions of the proposed TMDL have already undergone the scientific peer review required by the Health and Safety Code. The proposed TMDL contains a scientific approach to regulating bacteria that is drawn from the Santa Monica Bay Beaches Bacteria TMDL and existing bacterial water quality objectives, which were both previously peer reviewed. As a result, the Regional Board has fulfilled the requirements of Health and Safety Code section 57004, and the proposed TMDL does not require further peer review.

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10.14	Latham and Watkins	5/19/06	Implementation of the proposed TMDL will interfere with the LA County storm water permit and SUSMP. Given the foundational problems with the TMDL discussed in this letter, including the TMDL's inadequate consideration of internal loads, adoption of the TMDL limits into the public storm drain permit will have the effect of forcing the public storm drain permittees into compliance with a flawed bacteria TMDL. This adoption will then interfere with implementation of the SUSMP program. By way of example, the BMPs listed in the Implementation Plan appear to substantially restrict the allowable water quality controls which could be utilized to both comply with the SUSMP and meet the TMDL limits. This would create considerable uncertainty on the part of the business community.	Although the draft TMDL staff report presents some potential implementation strategies, there is no requirement to follow the particular strategies proposed. The storm water permit shall be reopened or amended at re-issuance to incorporate the applicable waste load allocations as permit requirements...
10.15	Latham and Watkins	5/19/06	Establishing allocations in the TMDL that even if met, will not lead to the achievement of water quality standards in the receiving waters due to the internal sources of bacteria, is not good public policy. The Agency would better serve public policy by proposing a TMDL that is attainable and that recognizes the ubiquitous nature of bacteria and accounts for the external and internal loads of bacteria. "The law never requires impossibilities." Cal. Civil Code §3531.	There is sufficient flexibility in the allocations and implementation strategy that, given the time allowed, the water quality standards are entirely attainable. Notably, TMDLs may require permits to be modified, because the existing permits have not achieved attainment of water quality standards. Inconsistencies between new regulations and existing permits will be reconciled in due course.

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10.16	Latham and Watkins	5/19/06	Enforcement of the TMDL limits is not required to protect beneficial uses. Recent studies suggest that indicator level bacteria targeted by the TMDL do not necessarily equate to human health problems or adversely affect recreational uses, which the TMDL is being established to protect. Given that protection of human health is the TMDL's goal, the TMDL should be revised to target pathogens, and should not rely on imprecise indicators as fixed compliance standards.	Section 303(d)(1)(C) requires the TMDL and its allocations to meet standards. The applicable standards for Ballona Creek include bacteriological objectives that are consistent with U.S. EPA's recommended criteria and objectives contained in state law (California Code of Regulations, Title 17, Section 7958, which implements Assembly Bill 411 (1997 Stats. 765)). Recreating in waters with elevated bacterial indicator densities has long been associated with adverse human health effects. Specifically, local and national epidemiological studies compel the conclusion that there is a causal relationship between adverse health effects and recreational water quality, as measured by bacterial indicator densities.
10.17	Latham and Watkins	5/19/06	While potential Best Management Practices ("BMPs") included in the TMDL implementation plan include source controls, volume controls, "brick and mortar" treatment controls, and other physical controls, the failure to include many BMPs which rely upon "natural treatment" methods overlooks the integral role of these systems as part of the larger water quality control management scheme in Southern California. While in-stream solutions, such as creek restoration, are proposed as part of the Implementation Plan, these BMPs are not discussed in the context of wet weather.	See response to comment No. 4.4.

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10.18	Latham and Watkins	5/19/06	The currently proposed TMDL fails to account for a variety of recognized types of natural water quality treatment devices, which substantially restrict the ability of the regulated community to comply with the proposed TMDL limits. The Agency should establish separate limitations for wet ponds and other natural treatment systems that recognize the unique features of natural treatment systems and distinguish between bacteria from urban runoff sources which may contain human-related pathogens, and naturally occurring bacteria that function as part of the greater ecosystem that are not potentially linked to human health issues.	The implementation section of the TMDL discuss reasonably foreseeable means of complying with the TMDL, but does not dictate the means by which responsible agencies should comply with TMDL requirements. "Natural" systems/waterbodies exceeding limits due to naturally occurring bacteria and wildlife may use a natural sources identification study to invoke the natural sources exclusion implementation provisions of the bacteria objectives.
11.1	GeoSyntec Consultants	5/19/06	The recently drafted Bacteria TMDL for Ballona Creek, Ballona Estuary, and Sepulveda Channel (4/4/2006) proposes to set waste load allocations (WLAs) for the impaired reaches of Ballona Creek, as well as its tributaries, based on numeric concentration targets with an allowable number of exceedance days for summer dry weather, winter dry weather, and wet weather. The WLAs as currently proposed would place stringent restrictions on stormwater dischargers that would likely require highly engineered, energy intensive treatment systems, such as ultra-violet disinfection, ozone disinfection, or diversion to wastewater treatment facilities, to assure that the bacteria water quality objectives as specified are met. We believe that the requirement, if adopted as proposed, would discourage the use if more natural, less energy	The Regional Board does not discourage the use if more natural, less energy and/or chemical use intensive, multi-beneficial solutions. The purpose of the TMDL is to restore beneficial uses of impaired water bodies by requiring that water quality objectives to be attained. Responsible jurisdictions have the choice in determining the means by which this will be achieved.

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			and/or chemical use intensive, multi-beneficial solutions, such as constructed wetlands (surface and subsurface flow), retention ponds, and bioretention systems.	
11.2	GeoSyntec Consultants	5/19/06	It is important to recognize that human pathogen bacterial indicators in receiving water samples are in many cases not a reliable proxy for determining significant impact on human-contact recreational uses in receiving waters. Because measurements of indicator bacteria are not direct measurements of pathogens (and associated human health risks), many epidemiological studies have found conflicting results, and often fail to indicate a consistent relationship between a given bacteria indicator and a human-related illness (e.g., gastrointestinal illness)(Fleisher et al. 1996). Several studies also indicate that pathogen levels and associated public health risk does not correlate with elevated levels of bacterial indicators in receiving waters, even in waters impacted by urban runoff (Schroeder et al. 2002, Jiang et al. 2001, Nobel and Fuhrman 2001). In response to uncertainties over the use of indicator bacteria, the U.S. EPA has indicated that non-human sources of fecal contamination need not be considered in determinations of water quality standard attainment if sanitary surveys and epidemiological studies show the sources of the indicator bacteria are non-human and the indicator densities do not indicate a human health risk (USEPA 2004). The TMDL should take into account	See response to 2.12

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			<p>natural vs. human sources of pathogens, as it is very likely that a significant portion of the indicator bacteria released from natural treatment systems do not represent a significant human health. Simply allowing a number of exceedance days as compared to a reference system would not fully account for natural sources of bacteria. It is important to note that much of the indicator bacteria sources in natural water bodies that are not treated by BMPs are of non-human origin.</p>	
11.3	GeoSyntec Consultants	5/19/06	<p>Bacteria concentrations in stormwater and dry weather flows as well as receiving waters are extremely variable, both spatially and temporally (Molina 2005). As samples collected for bacteria are almost without fail single grab samples (due to holding time issues), their variability is much higher than other pollutant characterizations where samples are collected on a flow-weighted composite sample basis which tends to reduce the temporal variability of the data collected. This variability also extends into the receiving waters. The USEPA (2002) has expressed a preference for the use of inferential statistics for bacterial data rather than simple descriptive statistics due to the ability of these inferential methods to account for the uncertainty of sample data by accurately representing the distribution of the parent population. In addition, the USEPA (2002) has stated that "... the best way to interpret any single given measurement is in comparison to the confidence level associated with</p>	<p>There are no statistics used (neither descriptive statistics nor inferential statistics) in determining an exceedance day; the value measured is simply compared to the standard. If a responsible party is concerned that the values measured are not representative (due to the characteristic variability of bacterial levels) the party can monitor more frequently or in more places for a more accurate tally of exceedance days. Further, the US EPA gives states the discretion to apply the single sample maximum limits as it sees fit in its water quality standards regulation. See response 2.12.</p>

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			the distribution around the geometric mean”. Since single sample measurements of bacteria may cause an exceedance day even though the measured value may not be statistically significantly different from a non-exceedance value, the use of the single sample threshold is not scientifically justifiable as a regulatory standard.	
11.4	GeoSyntec Consultants	5/19/06	When developing the bacteria TMDL, the RWQCB attempted to acknowledge that indicator bacteria are naturally-occurring by permitting a limited number of exceedance days per year based on historical water quality data at a reference beach and including the natural source exclusion provision if an “appropriate reference system cannot be identified due to the unique characteristics of the target water body.” However, we believe that the pervasiveness of indicator bacteria in natural systems has not been adequately assessed because the single reference beach is not representative of estuarine, wetland, or freshwater environments and the bacteria contributions from in-stream sources have not been sufficiently quantified. In addition, the reference beach is not representative of natural bacteria sources from natural treatment systems themselves or non-human sources from urban areas.	See response to 2.6. With regard to the reference beach being unrepresentative of bacteria from natural treatment systems or non-human sources from urban areas, responsible agencies have the option of pursuing a natural sources exclusion approach if conditions in the waterbody are unique and cannot be adequately addressed using the reference system approach.
11.5	GeoSyntec Consultants	5/19/06	The single site reference beach used to set the allowable number of day and wet weather exceedance days for the Ballona Creek and Estuary was Leo Carrillo Beach – the same reference beach used for both the Santa Monica Bay Wet and Dry	See response to 2.6

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			<p>Weather Bacteria TMDLs. As stated in the Dry Weather TMDL for Santa Monica Bay (LARWQCB, 2002a), “historical data for Leo Carrillo Beach shows no exceedances during summer dry weather (April 1 to October 31) and on average 3% exceedance during winter dry weather. Therefore, the reference system criterion is 0% exceedance days for summer day weather and 3% exceedance (or four days under a daily sampling regime) during winter dry weather.” It is important to note that exceedance frequencies in the surf zone are likely significantly lower than upstream freshwater exceedance frequencies due to significant saltwater dilution, die-off, and mixing effects. Therefore, the use of the historical bacteria data from the Leo Carrillo beach is inappropriate for setting the allowable exceedance frequencies in the freshwater Ballona Creek and brackish Estuary without consideration of the significant dilution and other processes that occurs when these waters reach the bay.</p>	
11.6	GeoSyntec Consultants	5/19/06	<p>The TMDL includes a provision that permits “eligible” water bodies, as determined by the “responsible agencies”, to exceed the single sample objectives if it can be demonstrated that natural sources of bacteria are the primary contributors to the exceedance or an appropriate reference system cannot be identified due to the uniqueness of the water body. The natural source exclusion provision of the TMDL provides a means for accounting for</p>	<p>Indicator bacteria data from multiple reference systems in southern California are being collected and evaluated so that four years after the effective date of the TMDL the Regional Board can re-assess the allowable exceedance days based on a re-evaluation of the selected reference watershed and a consideration of the other reference watersheds which may better represent Ballona Creek and Estuary. In addition, before or after the re-evaluation, the responsible parties have the option of pursuing a Natural Sources</p>

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			<p>natural bacteria sources, but it places the burden of proof on the responsible agencies for each water body rather than providing a statistically robust analysis of historical data from multiple reference systems. Data from multiple reference systems in southern California should be evaluated to appropriately set the number of exceedance days. In addition, evaluations of natural treatment systems should be conducted to ascertain the natural vs. human origin of pathogen indicators to set appropriate thresholds for runoff that is treated by such systems.</p>	<p>Exclusion for regulated waterbodies which may be truly unique.</p>
11.7	GeoSyntec Consultants	5/19/06	<p>Bacteria are naturally present in water bodies, soils, and vegetation. Under the appropriate conditions, bacteria have the potential for re-entrainment and regrowth, as well as a generation of new bacteria within and downstream of stormwater discharges with or without BMPs. Bacteria associated with particulates may persist and propagate in the sediments of streams, lakes, and stormwater ponds for weeks or months (Schueler, 2000). Previously settled sediments and the attached bacteria in the Ballona Creek or Estuary can be resuspended and become a source of bacteria during high flows. Birds and other wildlife that inhabit the Creek and Estuary may be significant internal sources of bacteria. The bacteria model used to justify the linkage between pollutant sources and receiving water impairment for the Santa Monica Bay Wet Weather TMDL, which is also incorporated by reference in this TMDL, is a</p>	<p>While there are birds and wildlife that inhabit the estuary and potentially contribute to internal loading of bacteria, this can be accounted for under the reference system approach or alternatively the natural sources exclusion approach.</p> <p>The bacteria model referred to is still being refined and was not the basis for setting the Waste Load Allocations. Once calibrated and validated the model results may be used to modify waste load allocations and/or to identify and prioritize implementation options.</p>

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			<p>land use-based pollutant build-up and wash-off model that does not consider regrowth, reentrainment, or other in-stream sources (e.g., wildlife). In fact, only degradation based on a first-order decay rate of 0.8 per day was used (LARWQB, 2002b) with no accounting for internal sources. These internal sources should be further assessed before waste load allocations are assigned to the tributaries and reaches of Ballona Creek and Estuary based on beneficial use attainment as evaluated with the contact recreation water quality objectives. New and re-growth of bacteria must be considered in loadings models and TMDL development. Thus, use of a decay coefficient to model in-stream processes is not representative, and is not supportable without accounting for internal sources and regrowth.</p>	
11.8	GeoSyntec Consultants	5/19/06	<p>As stated in the draft TMDL, the preferred strategy for achieving compliance in the Ballona Creek Watershed is 1) institutional flow source control, 2) bacteria source control, 3) structural/physical source control, 4) stormwater treatment at the North Outfall Treatment Facility (NOTF) and discharge/refuse, 5) dry weather diversion to Hyperion Treatment Plant (HTP), and 6) in-stream solutions. While the source control and in-stream components of this strategy are important parts of any integrated watershed management plan, the preference to treat creek flows at wastewater treatment plants (NOTF and HTP) contradicts the purported focus on “beneficial re-</p>	<p>The implementation alternatives and strategies discussed in the staff report do not preclude any appropriate potential management measures applicable to the Ballona Wetlands. The Porter Cologne Water Quality Control Act prohibits the Regional Board from prescribing the method of achieving compliance with water quality standards, and likewise TMDLs. The staff report presented some potential implementation strategies; however, there is no requirement to follow the particular strategies proposed.</p>

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			uses and other multi-purpose goals” by omitting natural treatment BMPs, such as bioretention facilities, constructed wetlands, and retention ponds. As opposed to conventional treatment plants, these BMP types have little to no energy or chemical use requirements and provide many ancillary benefits such as aesthetics, heat island reduction, and riparian and aquatic habitats as well as being very effective for multiple other pollutants of concern. They are also all recommended in the Los Angeles County Standard Urban Water Mitigation Plan (SUSMP) for meeting the SUSMP design storm requirements.	
11.9	GeoSyntec Consultants	5/19/06	Data from BMP studies such as these should be factored into the setting of numeric targets if the Regional Board is interested in promoting natural treatment systems in the Ballona Creek watershed.	Data from BMP studies will assist responsible agencies in selecting appropriate BMPs to achieve compliance with the TMDL. The Regional Board, while supportive of the use of natural systems does not promote any implementation strategy.
11.10	GeoSyntec Consultants	5/19/06	The linkage analysis fails to consider internal sources even though there is strong evidence that these sources are significant in Ballona Creek (Noble et al. 2006). The final statement in the linkage analysis states that “by directly applying the numeric water quality standards and implementation procedures as Waste Load Allocations, there is little uncertainty about whether meeting the TMDLs will result in meeting the water quality standards.” However, this conclusion is not supported with sufficient data or analysis. In fact, several of the recent bacteria, studies discussed above (City of Encinitas 2006, Flow Science 2005; Grant et al.	It is premature to address internal sources since Ballona Creek has significantly elevated concentrations of bacteria from inputs external to the creek. These should be reduced prior to considering the impact of internal sources of bacteria on water quality impairment.

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			<p>2001; Gruber et al. 2005; Noble et al. 2006) directly contradict this statement since they all indicate that regrowth and/or internal sources are major contributors to indicator bacteria observed in the receiving waters studied, including Ballona Creek. Since all sources of bacteria, including internal sources, have not been adequately assessed in the development of the TMDL, there is considerable uncertainty that meeting the TMDLs via controlling discharges to Ballona Creek and Estuary will result in receiving water beneficial use attainment. In fact, it is less likely that implementation of the proposed TMDL will not result in attainment of beneficial uses in these water bodies as defined by meeting the REC-1 standard.</p>	
11.11	GeoSyntec Consultants	5/19/06	<p>The current TMDL discourages the use of natural treatment systems for stormwater treatment without providing reasonable assurances that downstream beneficial uses are attainable with more advanced, but costly, energy or chemical intensive, treatment. Of the many types of stormwater BMPs to choose from, natural treatment systems such as wet ponds and wetlands as well as soil-based biofiltration systems tend to be among the most reliable at reducing a large suite of stormwater pollutants, including bacteria, while providing many ancillary benefits such as aesthetics and wildlife habitat (WERF, 2005). Furthermore, wet ponds and constructed wetlands are among the best performing stormwater BMPs with respect to bacteria listed in</p>	<p>It is unclear to Regional Board staff how the TMDL can be perceived as discouraging the use of natural systems. Responsible entities have the option of choosing whatever approach they determine to be most suitable in achieving compliance with the TMDL. The Regional Board may not prescribe what strategies should be implemented. The implementation strategies presented in the TMDL were provided by interested parties participating in a stakeholder process. These strategies serve to show that different means can be used to comply with TMDL requirements, and are not an endorsement of a particular strategy.</p>

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			<p>the California BMP Handbooks (www.cabmphandbooks.com) The Bacteria TMDL should consider the tradeoffs of encouraging multi-beneficial, natural treatment practices with demonstrated multi-pollutant effectiveness versus, in effect, encouraging energy intensive, structural BMPs that target a single pollutant. The benefits of attracting wildlife or soil microorganisms should not be discouraged by requiring what is in essence the disinfection of naturally-occurring bacteria at levels typical of undeveloped water bodies, especially wetlands.</p>	
11.12	GeoSyntec Consultants	5/19/06	<p>Studies should be conducted that evaluate the changes in bacteria sources (e.g., human vs. natural) during treatment through natural treatment systems to assess their effectiveness at reducing anthropogenic sources of bacteria. Microbial source tracking technologies are available to reliably evaluate the host origin of microbes. Ultimately, what is required is an understanding of whether natural treatment systems or other natural systems (including Ballona Creek and Ballona Estuary) contribute to or reduce human pathogens. In addition, more studies are needed to assess the influence of tributaries on downstream bacterial impairment because the Nobel et al. (2006) study suggests that a reduction in exceedances of numeric targets from upstream discharges will not reduce exceedances of the downstream REC-1 standards.</p>	Comment duly noted
11.13	GeoSyntec	5/19/06	The use of only one reference system, particularly	See response to 2.6

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	Consultants		one that is not representative of the creek and estuary complex of the Ballona Creek Watershed, is inappropriate for setting the bacteria TMDL waste load allocations for the watershed. The use of surf zone water quality data at Leo Carrillo Beach to set the allowable exceedance frequencies in Ballona Creek and Estuary cannot be substantiated without further study of the relationship between upland bacteria exceedances and surf zone exceedances.	